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**Subject: Prior checking notification concerning probation procedure**

Dear Mr CZEKALOWSKI,

I refer to the notification for prior checking concerning probation procedure submitted to the European Data Protection Supervisor (EDPS) by the Data Protection Officer (DPO) of the European Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice (eu-LISA) on 19 October 2015. I also take note of the additional information provided on 12 January 2016.

We note that the probation procedure is in most aspects in compliance with Regulation (EC) N° 45/2001<sup>1</sup> (the Regulation) as outlined in the EDPS Staff Evaluation Guidelines<sup>2</sup> and will therefore only address the existing practices which do not seem to be fully compliant in this respect.

**1. Data conservation.** According to the information provided in the notification, the probation reports are kept in personal files for ten years "counted from the employment date".

Pursuant to Article 4(1)(e) of the Regulation personal data can be kept for no longer than necessary for the purpose for which they were collected or further processed.

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<sup>1</sup> 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.

<sup>2</sup> EDPS Guidelines on the processing of personal data in the area of staff evaluation of 15 July 2011 (EDPS 2011-042).

The purpose of processing of personal data within probation reports is to evaluate the staff members' initial performance and competences with a view of confirmation or termination of their contracts of employment. Moreover, the probation reports may be used to determine further training.

In this respect, we would like to question the necessity of keeping the reports for ten years after the beginning of employment at the agency. Consequently, we would like to invite the eu-LISA to reconsider the existing conservation time limit and establish a shorter one in relation to the actual purposes of the processing.

**2. Information to data subjects.** The EDPS notes that all information required in terms of Articles 11 and 12 of the Regulation is provided in the privacy notice included in the probation report.

However, the information about the purpose of the processing as well as the rights of data subjects is either incomplete or misleading. In particular, the privacy notice states that "*the purpose of the processing is the assessment of the person - job match for employment contract confirmation or termination and that the data cannot be used for any other purpose.*" Furthermore, it mentions that "*data subjects can exercise their rights of access and rectification of the personal data at any time by contacting the controller*", whereas the notification states that the "*data subjects also have the right to rectify their administrative data that are inaccurate or incomplete by contacting the controller, with the exception of the evaluation data in respect of which data subjects may only submit comments.*"

Therefore, we recommend that the existing privacy notice is revised in the following manner:

- the (further) use of the probation report for training and/or learning and development, as well as the preparation of the first annual appraisal report is added to the information about the purposes of the processing;
- the impossibility to rectify the evaluation data due to their subjective nature is mentioned as well as the related right of appeal.

In conclusion, the EDPS considers that there is no reason to believe that there is a breach of the Regulation provided that the considerations contained in this Opinion are fully taken into account. In particular, the eu-LISA should shorten the existing conservation time limit as well as revise the existing privacy notice in a manner outlined above.

The EDPS expects that the eu-LISA implements these recommendations accordingly and will therefore close the case.

**(signed)**

Wojciech Rafał WIEWIÓROWSKI

Cc: Fernando POCAS DA SILVA, DPO