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Brussels, 06 June 2018
WW/ALS/sn/D(2018)1271 C 2015-0439
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**Subject: Prior-check Opinion on the recruitment procedures at EMSA
(case 2015-0439)**

Dear [...],

On 18 May 2015, the European Data Protection Supervisor (EDPS) received a notification for prior checking under Article 27 of Regulation (EC) No 45/2001¹ ('the Regulation') on the recruitment procedure in the European Maritime Safety Agency (EMSA) from the Data Protection Officer (DPO) of EMSA.²

The EDPS has issued Guidelines on how to process personal data in the field of staff recruitment.³ Therefore, the description of the facts and of the legal analysis will only mention those aspects which differ from these Guidelines or otherwise need improvement. In the light of the accountability principle guiding his work, the EDPS would nonetheless like to highlight that

¹ OJ L 8, 12.1.2001, p. 1.

² As this is an ex-post case, the deadline of two months does not apply. This case has been dealt with on a best-effort basis. The case has been pending the reply of EMSA due to the update of their records management system and respective retention periods in line with the EC's CRL together with further questions. On 20 March and 12 April 2018 we received the information requested.

³ Available on the following link:

https://edps.europa.eu/sites/edp/files/publication/08-10-10_guidelines_staff_recruitment_en.pdf.

all relevant recommendations made in the Guidelines apply to the processing operations put in place for whistleblowing at EMSA.

EDPS recommendations and reminders are highlighted in bold below.

Conservation period

According to Article 4(1)(e) of the Regulation, personal data must be *‘kept in a form which permits identification of data subjects for no longer than is necessary for the purposes for which the data were collected or for which they are further processed.’*

EMSA has aligned its conservation periods with the European Commission’s Common Retention List (CRL). For recruited applicants, personal data is kept 8 years after the extinction of all rights or 120 years after the date of birth of the person concerned, as part of their personal file. Regarding non-recruited officials, a copy of the candidate’s application file is stored and archived at EMSA for 10 years after the recruitment procedure is closed. For the non-recruited contract agents and temporary staff, the application file is kept for 5 years after the closure of the recruitment procedure. Concerning non-recruited applicants whose names were put on a reserve list, EMSA implements the 5 years retention period mentioned above for all candidates. It is however not clear to the EDPS from when the 5 years retention period is calculated, whether it is from establishing the list or from when the list expires (see recommendation under information to data subjects below). If the reserve list is extended, the retention period starts again from the date of the extension.

The EDPS considers that data of successful candidates should be kept in the personal file for a retention period of ten years as of the termination of employment or as of the last pension payment. Therefore, and as EMSA highlights, **the retention period of 120 years are not in line with the EDPS Guidelines.**

However, the EDPS is aware about the fact that the agencies have no margin of maneuver when it comes to these retention periods, which are basically binding on EU agencies such as EMSA. In light of the above, the EDPS will deal with the issue of retention periods set in the CRL more broadly through discussions with the Commission.

Information to data subjects

The EDPS notes that almost all information required under Articles 11 and 12 of the Regulation is provided in the privacy statement. However, the privacy statement does not inform the data subjects from when the retention period is calculated. Since this is as important as the length of the retention period, **the EDPS recommends clarifying in the privacy statement the starting point of the retention periods.**

Furthermore, the privacy statement does not mention reserve lists and from when the 5 years retention period is calculated, whether it is from the establishment of the list or from when a list expires. Regarding extension of a reserve list, EMSA has explained that the retention period starts again from the date of the extension which the EDPS understands as the date of the decision to extend the list. For the sake of clarity, **the EDPS recommends to add information about the retention period for reserve lists and extension of reserve lists and to clarify the starting points for these lists.**

In light of the accountability principle, the EDPS trusts that EMSA will ensure that the recommendations are fully implemented. The EDPS has therefore decided to **close case 2015-0439**.

Yours sincerely,

(signed)

Wojciech Rafał WIEWIÓROWSKI

Cc: [...], DPO, EMSA