

**EDPS comments on a draft Decision of the Management Board of the European Chemicals Agency on internal rules concerning restrictions of certain rights of data subjects in relation to processing of personal data in the framework of the functioning of the European Chemicals Agency.**

**1. Introduction**

- These comments refer to a draft Decision of the Management Board of the European Chemicals Agency on internal rules concerning restrictions of certain rights of data subjects in relation to processing of personal data in the framework of the functioning of the European Chemicals Agency, herein after the ‘draft internal rules’. Our comments refer to the document submitted on 11 April 2019.
- We give these comments in accordance with Article 41(2) of Regulation (EU) 2018/1725 (hereinafter ‘the Regulation’)<sup>1</sup>.

**2. General comments**

- The EDPS takes note that the rules are written in a clear and precise way.
- Concerning the right to information, we take note that the European Chemicals Agency is going to publish data protection notices on its website and intranet informing all data subjects of the potential restrictions of their rights related to personal data processing.
- The EDPS also takes note of the fact that the European Chemicals Agency will perform a necessity and proportionality test on the need for the restriction of data subjects’ rights, according to several provisions of the internal rules.
- The EDPS **calls for limiting the ground for restriction enlisted in Article 3 of draft internal rules. These grounds should only reflect the specific processing operations, as justifying the restrictions.** For instance, administrative inquiries or disciplinary proceedings fall **exclusively under the Article 25 (1) b of the Regulation.** Therefore, reference to grounds such as i.a. “protection of judicial independence” or “enforcement of civil law claims” is not justified on the basis of the nature of processing operations.
- The EDPS welcome that the European Chemicals Agency is documenting the restrictions for accountability purposes, namely to make the files available to the EDPS upon request.

**3. EDPS recommendations**

- The EDPS takes note that the necessity and proportionality test is provided in the draft internal rules. However, the wording of Article 3 (3) of draft internal rules implies that such test assesses whether given restriction is proportionate to the risks

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<sup>1</sup> OJ L 295, 21.11.2018, p. 39.

to the rights and freedoms of data subject. The **EDPS underlines that the necessity and proportionality test will imply assessing the risks to the rights and freedoms of the data subjects, but is broader than that assessment: it is about assessing whether the risks caused by the restriction are justified and proportionate in the light of the right or interest that the restriction is intended to protect.** As such, the necessity and proportionality criterion aims at balancing the scope of the restriction of the fundamental right at stake. **Changing the sentence “Any restriction shall be necessary and proportionate to the risks to the rights and freedoms of data subjects” to “Any restriction shall be necessary and proportionate taking into account the risks to the rights and freedoms of data subjects [...]” would help to clarify this.** This recommendation follows from the general principle that any limitation on the exercise of the fundamental rights protected by the Charter of Fundamental Rights of the European Union must be provided by law, respect the essence of the rights, genuinely meet objectives of general interest recognised by the Union or protect the rights and freedoms of others, be necessary and proportional.

- In relation to the necessity principle, the EDPS underlines that **restrictions should be temporary and be lifted when their causes no longer apply.** Therefore, the EDPS welcomes the fact that restrictions will be **reviewed every six months**, and reminds that in such cases a necessity/proportionality assessment should be conducted. Nevertheless, in some situations, European Chemicals Agency will only assess the need to maintain the restriction on an annual basis, which appears to be too long. **European Chemicals Agency should apply the six months review cycle in all situations.**
- The EDPS would like to remind that, according to Article 25(5) of the Regulation, this decision should be **signed at the highest management level.**

Brussels,

