



WOJCIECH RAFAŁ WIEWIÓROWSKI
ASSISTANT SUPERVISOR

Mr [...]
Head of Administration Division
European Medicines Agency (EMA)
30 Churchill Place
Canary Wharf
London E14 5EU
United Kingdom

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WW/BR/kt/ D(2015) 914 C 2007-0418
Please use edps@edps.europa.eu for all
correspondence

Subject: Updated notification - Internal publication of justifications for promotion decisions (2007-0418)

Dear Mr [...],

We refer to the letter from EMA Data Protection Officer of 19 May 2015 containing an updated notification relating to the promotion of temporary staff at EMA. This data processing was subject to our Opinion of 20 February 2008 in Case 2007-0418.

The update relates to the publication on EMA intranet of a document summarising every year the justification for promotion decisions concerning the staff members promoted. According to EMA, this publication aims at improving the accountability of the decision-making on the yearly promotion exercise of EMA's temporary staff in accordance with the obligations of transparency and good administration incumbent on EU public bodies.

As far as the contemplated publication is concerned, our recommendations in relation to Regulation 45/2001¹ (the "**Regulation**") are as follows.

1. Lawfulness of the publication

The publication of justifications for promotion decisions must have a legal basis and be necessary for a task carried out in the public interest (Article 5(a) of the Regulation).

Recommendations: The implementing rules on promotions should:

- provide expressly that a document summarising the justification for promotion decisions shall be published every year on the intranet;

¹ 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.

- explain, for example in the recitals, the *ratio legis* underlying such publication, i.e. improve fairness of the decision-making on promotions and good administration through enhanced transparency of the process².

2. Information and right to object

According to the notification, EMA staff shall be informed, at the outcome of each promotion exercise, about the publication of justifications for promotion decisions and about their right to object based on compelling legitimate grounds. This information shall be included in the communication announcing the start of the promotion exercise. Reference to such a publication should also be made in the general privacy statement on the promotion exercise.

In addition, the persons concerned by a promotion need to receive the individual justification of their promotion that EMA intends to post on the intranet before the justification is disclosed to all staff. This is an element of fair processing (Article 4(1) (a) of the Regulation) and allows the persons concerned to exercise in due time their right to object to such publication (Article 18 of the Regulation).

Recommendations: EMA must:

- add a reference to the publication of justifications for promotion decisions to the privacy statement on the promotion exercise;
- include in the promotion process that each staff member concerned must receive the text of the individual justification of their promotion that EMA intends to post on the intranet enough in advance so that he/she can exercise his/her right to object.

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The EDPS expects that EMA implements the above-mentioned recommendations and will therefore **close** the case.

Please note that the updated notification as well as this letter will be published along with the original notification in the EDPS public register of processing operations under the same unique number (2007-0418).

Yours sincerely,

(signed)

Wojciech RAFAŁ WIEWIÓROWSKI

Cc: Mr[...], EMA Data Protection Officer

² Under Article 5(a) of the Regulation, the processing must be necessary for the performance of a task carried out in the public interest on the basis of the Treaties or other legal instruments adopted on the basis thereof.