



PETER HUSTINX  
SUPERVISOR

Brussels, 23 September 2009  
**C 2009-583**

I acknowledge receipt of your consultation under Article 46 (d) relating to the special ID cards issued by the Ministry of Foreign Affairs for non Portuguese staff at the Agency. The ID cards are valid for a period of 3 years at the end of which the staff member hands the card to the EMSA protocol section and gets a new card. The EMSA protocol sends cards with a verbal note to a protocol division in the Ministry. Your concern relates to the further use of these cards by the Ministry of Foreign Affairs and to the corresponding conservation periods.

The handing over of the expired ID cards by EMSA to the Portuguese Ministry does not seem to be in breach of the data protection rules as provided in Regulation (EC) 45/2001. Indeed, the processing would be considered as lawful in accordance with Article 5b of the Regulation as it most probably corresponds to a legal obligation of the Agency according to national law. Furthermore the transfer can be based on Article 8a as the recipient appears to be of the opinion that the data are necessary for the performance of a task carried out in the public interest or subject to the exercise of public authority. Once the data have been transferred by the Agency to the Ministry, national data protection law will apply and will determine the rules on conservation of the data and subsequent destruction of the cards. Any question as to the further use and conservation of cards is therefore subject to Portuguese jurisdiction and - where relevant - to supervision by the Portuguese Data Protection Commission.

Yours sincerely,

Peter HUSTINX