



**Joint opinion on two notifications for Prior Checking received from the Data Protection Officer of the Community Fisheries Control Agency (CFCA) concerning the "Transmission of inspection reports related to the bluefin tuna joint deployment plan (BFT JDP) and transmission of inspection reports (NAFO/NEAFC)"**

Brussels, 30 November 2011 (Cases 2011-0615 and 2011-0636)

**1. Proceedings**

On 24 and 29 June 2011, the European Data Protection Supervisor ("EDPS") received from the Data Protection Officer ("DPO") of the Community Fisheries Control Agency ("CFCA") two notifications for prior checking concerning the transmission of inspection reports related to the bluefin tuna joint deployment plan (BFT JDP) and the transmission of inspection reports (NAFO/NEAFC).

Due to similarities in the two data processing operations, the EDPS decided to analyse them jointly in a single Opinion.

On 4 July 2011, the EDPS sent a request for additional information to the DPO, who responded on 11 July 2011. Further questions were asked by the EDPS on the same day, which were answered on 15 July 2011. On 19 July 2011, the EDPS requested to be sent a full copy of the legal basis. On 6 September 2011, the DPO responded that he was unable to fulfil such query<sup>1</sup> and provided the following information to the EDPS: the two declassified decisions of the Executive Director of the CFCA relating to the Joint Deployment Plan for bluefin tuna 2008 and the Joint Deployment Plan for NAFO/NEAFC 2010. The draft Opinion was sent to the DPO for comments on 21 October 2011 and these were received on 23 November 2011.

**2. Facts**

The CFCA takes part, through its participation in a Technical Joint Deployment Group ("TJDG"), in the coordination of the activities carried out by EU Member States to control that the obligations set forth in international agreements on fisheries (e.g. ICCAT<sup>2</sup>) are being respected. The Agency takes part, as a member of the TJDG, in the following activities:

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<sup>1</sup> The answer of the DPO provides that "As already stressed in the notifications themselves, these decisions are classified "RESTREINT UE". According to the rules for the handling of documents classified "RESTREINT UE" applicable at the CFCA, access to such information should be limited to those with a "need-to-know". The two ED Decisions are still being implemented. Thus, the individuals having such a "need-to-know" are those involved in the implementation of the decisions". The DPO also pointed out that extracts of these decisions "relevant for the processing" had been communicated to the EDPS on 11 July 2011.

<sup>2</sup> The International Convention for the Conservation of Atlantic Tunas (ICCAT).

- i. coordinating the implementation of the joint inspection and surveillance scheme set forth pursuant to the Convention on Future Multilateral Cooperation in the Northwest Atlantic Fisheries ("NAFO Convention") and the Convention on Future Multilateral Cooperation in the North-East Atlantic Fisheries ("NEAFC Convention") (hereafter "NAFO/NEAFC inspections");
- ii. coordinating the implementation of the control and inspection programme related to the recovery of bluefin tuna (hereafter "ICCAT inspections").

The CFCA, together with the European Commission and the Member States concerned, defines in Joint Deployment Plans, approved by its Executive Director, the methods and actions to be deployed for such control. The last joint deployment plans approved by the Executive Director of the CFCA, which are the **legal bases** for the current processing operations, are set forth in the ED Decision No 2011/007<sup>3</sup> (ICCAT) and in the ED Decision No 2010/029<sup>4</sup> (NAFO/NEAFC).

During inspections, personal data of the owner or master of the fishing vessel and, where applicable (NAFO investigations) his crew, ("the **data subjects**") are collected by inspectors.

The **personal data** collected about the owners or masters of fishing vessels generally include their name, address and signature. Where applicable, the only personal data processed about crew members is their name. The inspection may reveal potential infringement of applicable EU law and international agreements and may therefore entail the processing of data relating to suspected offences or offences.

The CFCA does not collect personal data directly; the collection of personal data is done by inspectors from national Member States. The CFCA role in the **processing** of personal data for NAFO/NEAFC inspections and ICCAT inspections is to transmit the inspection reports drafted by inspectors to the relevant recipients for information (Member States, other Contracting Parties (only for NAFO/NEAFC), DG MARE<sup>5</sup>, and the Secretariat of NAFO/NEAFC where applicable).

The CFCA emphasized that it does not have competence for any follow up of the possible infringements, as this is the responsibility of inspecting Member States and Flag Member States.

The **processing** is performed through manual and automated means:

- for NAFO/NEAFC inspections: original reports and additional documents, are transmitted by the CFCA to flag states by regular mail. Copies of inspection

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<sup>3</sup> ED Decision No 2011/007 establishing a Joint Deployment Plan for 2011, 2012 and 2013 concerning the organisation of the use of pooled national means of control and inspection in European Union and outside waters under national jurisdiction covered by the Convention Area of the International Commission for the Conservation of the Atlantic Tunas.

<sup>4</sup> ED Decision No 2010/029 establishing a Joint Deployment Plan for 2011 and 2012 to give effect to the obligations of the European Union under the Joint Inspection and Surveillance Scheme set out in Article XI (5) of the Convention on Future Multilateral Cooperation in the Northwest Atlantic Fisheries and under the Joint Inspection and Surveillance Scheme set out in Article 8 (1) of the Convention on Future Multilateral Cooperation in the North-East Atlantic Fisheries.

<sup>5</sup> DG MARE, European Commission, represents the EU as Contracting Party in Regional Fisheries Management Organisations in accordance with Article 38 of the Treaty on the Functioning of the European Union.

reports with infringements are transmitted to NAFO and NEAFC secretariats by regular mail. Scanned copies of inspection reports without infringements are transmitted by e-mail. Scanned copies of all inspection reports are transmitted to DG MARE (European Commission) by e-mail;

- for ICCAT inspections: all inspection reports are transmitted by the inspection team to the TJDG by encrypted e-mail. Those reports related to possible non-compliance with applicable EU and ICCAT legislation are submitted by encrypted e-mail by the TJDG to Flag Member States, Inspecting Member States and DG MARE (European Commission). Other inspection reports from Member States (when no infringement found) are just filed by the CFCA and not transmitted to anyone. However, this year DG MARE requested to receive all Member States inspection reports in international waters. After getting the clearance from Member States, the CFCA submitted those reports to DG MARE. Concerning other inspection reports from non Member States (i.e. other ICCAT Contracting Parties), the CFCA submits those reports to DG MARE, who in turn has the obligation under the ICCAT Convention to resubmit them to ICCAT Secretariat.

Regarding the **retention periods**, CFCA keeps inspection reports for 5 years for purpose of training and risk analysis. Inspection reports are analysed and the results of this analysis are used for future trainings with a view to improve the way inspections are done and the way inspection reports are drafted. Inspection reports also provide useful information for the preparation of future campaigns and can be used as an element for risk analysis (e.g. which types of infringements occurred where). The CFCA indicated that Article 118(3) of the Commission Implementing Regulation (EU) No 404/2001 obliges to keep inspection reports for at least three years and does not foresee to make the reports anonymous for the period they are kept. The CFCA clarified that "personal data of the master, owner or crew are never used for the purposes of risk analysis and training or any other purposes, and copies of original reports are never distributed during training".

As to **data protection information**, there is a general data protection notice on the CFCA website. However, no specific data protection notices are foreseen by ICCAT, NAFO or NEAFC rules.

Regarding the **rights of the data subjects**, the CFCA indicated that the masters of fishing vessels are provided with a copy of the inspection report. The CFCA does not collect the data and has no influence on the content of the report drawn up by an inspector of an Inspecting Member State. Data subjects rights are restricted with regard to inspection reports containing possible infringements (Article 20(1)(b) and Article 5(b) of Regulation (EC) No 45/2001) since these reports might be used as evidence in court in the context of possible judicial action by the Inspecting Member State and Flag Member States.

The data processed are **transferred to:**

- for NAFO/NEAFC: to Flag States<sup>6</sup>, DG MARE (European Commission), and NAFO and NEAFC Secretariats<sup>7</sup>, in accordance with the applicable legislation;

- for ICCAT: to DG MARE (European Commission), Members of the Steering Group of the JDP, Member States national coordinators, to Flag Member States, and Inspecting Member States, in accordance with the applicable legislation.

As concerns **security measures**, [...]

### **3. Legal aspects**

#### **3.1. Prior checking**

**Applicability of Regulation (EC) No 45/2001 ("the Regulation"):** The activities relating to inspection reports by the CFCA involve a processing of personal data ("*any information relating to an identified or identifiable natural person*" - Article 2(a) of the Regulation). The data processing is performed by an EU body in the exercise of activities which fall within the scope of EU law (Article 3(1) of the Regulation, in the light of the Lisbon Treaty). The processing of the data is both automatic and manual; in the latter case, such processing forms part of a filing system (Article 3(2) of the Regulation). Therefore, Regulation (EC) No 45/2001 is applicable.

**Grounds for prior checking:** In accordance with Article 27(1) of the Regulation, "*processing operations likely to present specific risks to the rights and freedoms of data subjects by virtue of their nature, their scope or their purpose shall be subject to prior checking by the European Data Protection Supervisor*". Article 27(2) of the Regulation contains a list of processing operations that are likely to present such risks, which includes the processing of data relating to suspected offences, offences, criminal convictions or security measures (Article 27(2)(a)). The processing operations under review involve the processing of data indicating a suspicion of offence or an offence committed through a vessel, which data will necessarily be linked to the personal data of the owner and/or master of the vessel. As a result of the transmission of the inspection report, judicial proceedings may be initiated by the relevant state against the owner/master of the vessel concerning their possible non-compliant behaviour. Even if the CFCA does not collect such data itself, the mere possession, transmission, and further use of this information by the CFCA constitutes a specific risk to the rights and freedoms of the data subjects which requires subjecting such processing to prior checking.

**Ex-post prior checking:** The processing operations were already in place at the CFCA before the EDPS was notified. The EDPS reminds the CFCA that the Opinion of the EDPS should, as a rule, be requested and given prior to the start of any

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<sup>6</sup> The transmission of the original NAFO inspection report is foreseen in Article 35 paragraph 1 of NAFO Control and Enforcement Measures; the transmission of the original NEAFC inspection report is foreseen in Article 18 paragraph 11 of NEAFC Scheme of Control and Enforcement.

<sup>7</sup> Pursuant to Article 35 paragraph 1 of NAFO Control and Enforcement Measures and to Article 18 paragraph 11 of NEAFC Scheme of Control and Enforcement.

processing of personal data. Any recommendations made by the EDPS in this Opinion must be fully implemented accordingly.

**Deadlines:** The notifications of the DPO were received on 24 and 29 June 2011. In accordance with Article 27(4) of the Regulation, the EDPS Opinion must be delivered within a period of two months. The procedure was suspended for a total of 93 days. Consequently, the present Opinion must be provided no later than 1st December 2011.

### 3.2. Lawfulness of the processing

Article 5 of the Regulation provides criteria for making the processing of personal data lawful. In particular Article 5(a) provides that personal data may be processed if *"the processing is necessary for the performance of a task carried out in the public interest on the basis of the Treaties establishing the European Communities or other legal instruments adopted on the basis thereof or in the legitimate exercise of official authority vested in the Community institution or body"*.

The CFCA carries out the processing in the frame of the missions entrusted to it by Council Regulation (EC) No 768/2005 of 26 April 2005 establishing a Community Fisheries Control Agency, as amended by Council Regulation (EC) No 1224/2009 of 20 November 2009 establishing a Community control system for ensuring compliance with the rules of the common fisheries policy<sup>8</sup>. In particular, Article 5, paragraph 2, of Regulation (EC) No 768/2005 provides that "the Agency shall establish joint deployment plans and organise operational coordination of control and inspection by Member States". Pursuant to this provision, the CFCA has adopted joint deployment plans (ED Decision No 2011/007 and ED Decision 2010/029), which serve as the legal base for the processing operations under examination.

The EDPS notes that specific legal instruments 'adopted on the basis of the Treaties' allow for the notified processing operations<sup>9</sup>, whose specific conditions are further detailed in decisions adopted by the CFCA. There is therefore a legal basis covering the processing operations. The EDPS however underlines that a reference to compliance of the processing operations carried out in the frame of these joint deployment plans with the EU data protection laws (Directive 95/46/EC and

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<sup>8</sup> The EDPS issued an Opinion on the Proposal for a Council Regulation establishing a Community control system for ensuring compliance with the rules of the Common Fisheries Policy, 4 March 2009. The Opinion can be found at:

[http://www.edps.europa.eu/EDPSWEB/webdav/site/mySite/shared/Documents/Consultation/Opinions/2009/09-03-04\\_fisheries\\_EN.pdf](http://www.edps.europa.eu/EDPSWEB/webdav/site/mySite/shared/Documents/Consultation/Opinions/2009/09-03-04_fisheries_EN.pdf)

<sup>9</sup> Regulations (EC) No 768/2005 and (EC) No 1224/2009 set forth the general lines of the Community actions and powers in the field of control of the common fisheries policy. In addition, there are a number of specific EU instruments governing the control and inspection plans for bluefin tuna and NAFO/NEAFC, e.g. Council Regulation (EC) No 1599/2007 of 17 December 2007 establishing a multi-annual recovery plan for bluefin tuna in the Eastern Atlantic and Mediterranean, Commission Decision C(2008)1202 of 1st April 2008 establishing a specific control and inspection programme related to the recovery of bluefin tuna in the Eastern Atlantic and the Mediterranean, Council Regulation (EC) No 1386/2007 of 22 October 2007 laying down conservation and enforcement measures applicable in the Regulatory Area of the Northwest Atlantic Fisheries Organisation, Council Regulation (EC) No 2791/1999 of 16 December 1999 laying down certain control measures applicable in the area covered by the Convention on Future Multilateral Cooperation in the North-East Atlantic Fisheries, and Commission Regulation (EC) No 1085/2000 of 15 May 2000 laying down detailed rules for the application of control measures applicable in the area covered by the Convention on Future Multilateral Cooperation in the North-East Atlantic Fisheries.

Regulation (EC) No 45/2001) should be added in future joint deployment plans adopted by the CFCA to help ensure compliance of the processing operations with data protection law.

As concerns the necessity and proportionality of the processing operations, this assessment has proved difficult since the EDPS was not transmitted by the CFCA the full text of the legal bases for the processing operations on the ground that these documents are "EU restraint" (see footnote No 1). The EDPS considers that this reason cannot be validly invoked by the controller to refuse communicating to the EDPS documents which he needs access to for the purpose of carrying out his tasks, which in this case is the evaluation of the lawfulness of the processing operations. The EDPS emphasizes that Article 47 of Regulation (EC) No 45/2001 explicitly entitles the EDPS to access all documents necessary for carrying out his missions. In this case full access to the documents on the basis of inter-institutional rules as to the communication of "EU restraint" documents was particularly important in order for the EDPS to check that the processing operations involving personal data are necessary and proportionate to the pursued purpose.

The EDPS acknowledges that the provision of the former expired decisions of the CFCA has helped understand the exact missions and tasks of the CFCA in the concerned activities. On the basis of these documents, the EDPS reasonably assumes that the processing operations carried out by the CFCA as member of the TJDG are considered as necessary and proportionate for the purpose of controlling respect of international obligations in the field of fisheries. These processing operations could be therefore considered as lawful.

Finally, the EDPS considers that the processing operations cannot be based on Article 5(b) of the Regulation, contrary to what is argued by the CFCA. Article 5(b) provides that the "processing is necessary for compliance with a legal obligation to which the controller is subject". In this case, Article 5(b) cannot be validly relied upon since the obligations are obligations involving the processing of personal data that the CFCA imposes on itself through decisions of its Executive Director.

### **3.3. Processing of special categories of data**

Pursuant to Article 10(5) of the Regulation, *"the processing of data relating to offences, criminal convictions or security measures may be carried out only if authorised by the Treaties establishing the European Communities or other legal instruments adopted on the basis thereof or, if necessary, by the European Data Protection Supervisor, subject to appropriate specific safeguards"*.

The processing of suspicions of offences or offences by the CFCA in the frame of its participation in the European Union control system in the field of fisheries is authorised in legal instruments adopted on the basis of the EU Treaties, in particular in Council Regulation (EC) No 768/2005 and in Council Regulation (EC) No 1224/2009 mentioned in section 3.2 above.

### **3.4. Data Quality**

**Adequacy, relevance and proportionality:** In accordance with Article 4(1)(c) of the Regulation, personal data must be *"adequate, relevant and non excessive in relation to the purposes for which they are collected and/or further processed"*. On the basis of the information available, the personal data processed seem adequate and non excessive for purpose of establishing the inspection reports.

**Accuracy:** Article 4(1)(d) of the Regulation provides that personal data must be *"accurate and, where necessary, kept up to date"* and that *"every reasonable step must be taken to ensure that data which are inaccurate or incomplete are erased or rectified"*. The personal data processed are provided directly by the data subjects. The masters of fishing vessels are provided with a copy of the inspection report and the members of the crew sign the inspection report; these procedures help them understand the data processed about them. Furthermore, the rights of access and rectification are important means of ensuring accuracy of the data (see section 3.8).

**Fairness and lawfulness:** Article 4(1)(a) of the Regulation also provides that personal data must be *"processed fairly and lawfully"*. Lawfulness has already been discussed (see section 3.2) and fairness will be dealt with in relation to information provided to data subjects (see section 3.9).

### **3.5. Data retention**

Article 4(1)(e) of the Regulation states that 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"*.

The notification indicates that inspection reports are kept by the CFCA for five years for purpose of training and risk analysis. It was further confirmed by the controller that *"personal data of the master, owner or crew are never used for the purposes of risk analysis and training or any other purposes, and copies of original reports are never distributed during training"*.

The EDPS considers that, in view of the purposes for which the inspection reports are further processed by the CFCA, there is no necessity to keep them in an identified form for a period of 5 years. The EDPS notes that, pursuant to Implementing Regulation (EU) No 404/2001, the CFCA is under an obligation to keep them for 3 years. The EDPS therefore recommends that the CFCA keeps the inspection reports in an identified form for no longer than 3 years, as to comply with Article 4(1)(e) of the Regulation.

### **3.6. Transfer of data**

Personal data collected in the context of the processing operations under examination are transferred (i) within or between Community institutions and bodies (Article 7 of the Regulation), (ii) to recipients in the EU other than Community institutions and bodies (Article 8 of the Regulation), and (iii) to recipients outside the EU (Article 9 of the Regulation).

(i) Transfers within or between Community institutions and bodies

Under Article 7(1) of the Regulation, data may be transferred within or between Community institutions only if they are "*necessary for the legitimate performance of tasks covered by the competence of the recipient*".

All inspection reports are transferred to DG MARE, as set forth in the ED Decisions adopted by the CFCA. As regards ICCAT, DG MARE sends the inspection report to non Member States Flag States (since CFCA does not directly contact non Member States). As concerns NAFO/NEAFC, DG MARE, as representative of the EU in the Regional Fisheries Management Organisations<sup>10</sup> (NAFO, NEAFC and ICCAT), is bound to transmit the inspection reports to the flag state and the ICCAT commission pursuant to the rules established by these organisations<sup>11</sup>.

On the basis of the available information, the data transfers to DG MARE appear necessary for the legitimate performance of its tasks. The EDPS underlines that DG MARE is also under the obligation to ensure that its processing of personal data is done in accordance with Regulation No (EC) 45/2001.

(ii) Transfers to recipients in the EU other than Community institutions

The inspection reports are also sent to recipients in the EU Member States. The EDPS understands that these recipients are national authorities who are responsible for fisheries (Director General and all bodies/ agencies in charge of control and inspection).

There are two possible scenarios depending on whether the Member State concerned is (a) one in which the data protection legislation adopted pursuant to Directive 95/46/EC covers all sectors of the national legal system, including the judicial sector, or (b) one in which the data protection legislation adopted pursuant to Directive 95/46/EC does not cover all sectors, and in particular not the judicial sector.

As regards the first scenario, Article 8 of the Regulation specifies as follows: "*Without prejudice to Articles 4, 5, 6 and 10, personal data shall only be transferred to recipients subject to the national law adopted for the implementation of Directive 95/46/EC, (a) if the recipient establishes 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, (...)*". The follow up of the possible infringement is the responsibility of the Inspecting Member States and Flag Member States; the relevant authorities therefore need to obtain information about possible non-compliance in order to start proceedings where applicable. As concerns inspection reports where no potential infringement was found, their submission to the flag state of the inspected vessel is done in accordance with NAFO, NEAFC and ICCAT rules. The EDPS however underlines that it must be ensured that Article 8 of the Regulation is complied with in such cases.

For Member States which have not extended the application of national provisions implementing Directive 95/46/EC to the judicial authorities, such transfers must be

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<sup>10</sup> See footnote 6.

<sup>11</sup> The obligation for DG MARE to provide copies of the inspection report to the flag state and the ICCAT Commission is established by point 11 of Annex 8 to ICCAT Recommendation 10-04. This obligation stemming from international law is applicable to the EU as Contracting Party to the ICCAT Commission and will soon be transposed into EU legislation.



analysed under Article 9 of the Regulation. The Council of Europe Convention 108 provides for a relevant legal framework. Transfers to judicial authorities in such cases can be regarded as offering an adequate level of protection for the matter in hand.

### (iii) Transfers to recipients outside the EU

The inspection reports are also transferred to NAFO and NEAFC Secretariats, which are international organisations, and to other Contracting Parties national authorities responsible for fisheries.

As described in section 2 above, the transmission of the inspection reports to NAFO and NEAFC Secretariats and to other Contracting Parties national authorities responsible for fisheries are done pursuant to legal obligations laid down in EU law.

Article 9 provides that data may be transferred only to a recipient if an adequate level of protection is ensured in the country of the recipient or within the recipient international organisation and the data are transferred solely to allow tasks covered by the competence of the controller. If that is not the case, the processing operation must be based on the exceptions provided for in Article 9(6), for example Article 9(6)(d): *"the transfer is necessary or legally required on important public interest grounds, or for the establishment, exercise or defence of legal claims; (...)"*.

Given the nature of the data exchanged, the EDPS recommends that any transfer of data to recipients outside the EU which is based on one of the exceptions of Article 9 be registered by the CFCA, together with the legal justification for making the transfer.

### **3.7. Rights of the data subjects**

Articles 13 to 19 of the Regulation establish a number of rights for data subjects. These notably include the right to access data upon request by the data subject and the right to rectify, erase or block personal data.

The EDPS notes that the masters of fishing vessels are provided with a copy of the inspection report, which allows them to have access to the content of the report. Data related to the owner and member of the crew is only contained in the NAFO inspection reports. As regards the crew member, he has access to data relating to him by signing the inspection report. The owner does not sign the report; only his name appears on the report. The master is the owner's representative and it can be reasonably expected that the master informs the owner of the inspection<sup>12</sup>.

As concerns the exercise of the right of access, the CFCA must ensure that the requests it receives from data subjects to access to their own data are effectively dealt with in accordance with Article 13 of the Regulation, whether by providing itself the data requested or by ensuring that the data subject is appropriately given access by the relevant State who carried out the inspection.

The CFCA applies the restriction of Article 20(1)(a) of the Regulation to limit the right of access to inspection reports containing possible infringements because an

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<sup>12</sup> According to most Member States legal systems, the master of the vessel forms part of the commercial unit of the vessel owner and represents the latter on board the vessel as well as on land.

investigation which reveals potential infringements is ongoing. The EDPS reminds the CFCA that any restrictions to the right of access to such information on the basis of Article 20(1)(a) must not exceed what is necessary to achieve this purported objective. Furthermore, in accordance with Article 20(3), if a restriction provided for by Article 20(1) of the Regulation is imposed on a request for access, the data subject should be informed of the principal reasons on which the application of the restriction is based and of his or her right to have recourse to the EDPS.

### **3.8. Information to the person concerned**

Articles 11 and 12 of the Regulation provide for information to be given to data subjects in order to ensure the transparency of the processing of personal data. Article 11 provides that when the data is obtained from the data subject, the information must be given at the time of collection. When the data has not been obtained from the data subject, the information must be given when the data is first recorded or disclosed, unless the data subject already has it (Article 12).

It is not clear whether the data subjects are provided with any data protection notice at the time of collection of their data by the relevant inspectors. The EDPS notes that the CFCA does not provide data subjects with any specific data protection notice.

The EDPS recommends that specific information be provided to data subjects concerning the processing of their data, and in particular their use by the CFCA and their further disclosure to DG MARE and to other recipients. This could be done by posting a specific data protection notice for these processing operations on CFCA's website containing all the information listed in Article 12 of the Regulation. This data protection notice should in particular underline the role of the CFCA, the recipients of the data, and its storage of the data.

The EDPS further suggests that the CFCA, in its role of coordinator of the activities of EU Member States inspectors, could help develop a template data protection notice which could be used by inspectors. This data protection notice would contain all the elements listed in Article 10 of Directive 95/46/EC, such as the identity of the controller, the categories of data collected, the purpose of collection, the recipients of the data, and the rights of individuals as concerns their data.

### **3.9. Security measures**

In accordance with Article 22 of the Regulation, *"the controller shall implement appropriate technical and organisational measures to ensure a level of security appropriate to the risks presented by the processing and the nature of the personal data to be protected."* These measures must *"in particular prevent any unauthorised disclosure or access, accidental or unlawful destruction or accidental loss, or alteration, and to prevent all other unlawful forms of processing"*.

On the basis of the information available, the EDPS has no reason to believe that the measures implemented by the CFCA are not adequate in the light of Article 22 of the Regulation.

#### **4. Conclusion:**

There is no reason to believe that there is a breach of the provisions of Regulation (EC) No 45/2001 provided the above considerations are fully taken into account. In particular, the CFCA should:

- add a reference to compliance of the processing operations with the EU data protection laws (Directive 95/46/EC and Regulation (EC) No 45/2001) in future Joint Deployment Plans adopted by the CFCA;
- keep the inspection reports in an identified form for no longer than 3 years, as to comply with Article 4(1)(e) of the Regulation;
- ensure compliance with Article 8 as concerns the transmission to Member States' authorities of the inspection reports where no potential infringement was found;
- register any transfer of data to recipients outside the EU, together with the legal justification for making the transfer;
- ensure that the requests it receives from data subjects to access to their own data are effectively dealt with in accordance with Article 13 of the Regulation, whether by providing itself the data requested or by ensuring that the data subject is appropriately given access by the relevant inspecting Member State;
- ensure that any restrictions to the right of access to the information contained in the inspection report on the basis of Article 20(1)(a) does not exceed what is necessary to achieve the purported objective and inform the data subject of the principal reasons on which the application of a restriction to the right of access is based and of his or her right to have recourse to the EDPS (Article 20(3) of the Regulation);
- provide specific information to data subjects concerning the processing of their data, and in particular their use by the CFCA and their further disclosure to DG MARE and to other recipients, in accordance with Article 12 of the Regulation;
- help develop a template data protection notice which could be used by inspectors, which would contain the information listed in Article 10 of Directive 95/46/EC.

Done at Brussels, on 30 November 2011

**(signed)**

Giovanni BUTTARELLI  
Assistant European Data Protection Supervisor