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ASSISTANT SUPERVISOR

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Please use edps@edps.europa.eu
for all correspondence

Subject: Prior checking notification concerning internal mobility

Dear Mr. O'Malley,

I refer to the notification for prior checking on internal mobility submitted to the European Data Protection Supervisor (EDPS) by the Data Protection Officer of the European Chemicals Agency (ECHA) on 30 May 2013. I also take note of the additional information provided on 24 July 2013 and 17 December 2014.

I note that the internal mobility procedure is in most aspects in compliance with the Regulation (EC) No 45/2001¹ (the Regulation) and will thus only address the data conservation policy, which does not seem to be fully compliant in this respect.

According to the information provided in the notification, two different time limits are foreseen in this context, depending on the success of the respective applicant in the mobility procedure. The data of successful applicants are kept for ten years after the end of service, whereas the data of unsuccessful ones for two years after the end of the mobility procedure in order to allow for all possible appeals and complaints to the European Ombudsman.

In addition, I observe that according to the information provided at a latter stage, the time limit for conservation of data of successful applicants was adjusted to the time limit provided for data kept in the personal files in the Common Retention List of the European

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

Commission². The data of successful applicants are now kept for up to eight years after the extinction of all rights of the person concerned and/or any dependants and at least 120 years after the birth of the person concerned. It is considered that only the extended time limit may allow for management of any pending rights of the staff member concerned (such as pension payments), as well as for disciplinary procedures against former staff members.

Article 4(1)(e) of the Regulation states that personal data can be kept for no longer than is necessary for the purposes for which the data were collected or for which they are further processed.

Whereas the two years' time limit can be considered necessary in terms of Article 4(1)(e) of the Regulation in order to allow for all related legal actions by the unsuccessful applicants, the necessity of the extended time limit for the declared purposes seems to be questionable. Therefore, the EDPS would like to invite the ECHA to reconsider the extended time limit for the conservation of personal data of the successful applicants.

Moreover, the EDPS invites the ECHA to revise the information provided in the notification, as it could be misleading. In particular, information about the existing privacy statement should be added in the point 7, information about the actual procedure on how to make use the rights of data subjects should be added in the point 8 and information about the applicable data conservation limits should be updated in the point 13.

In conclusion, there is no reason to believe that there is a breach of the Regulation, provided that the recommendations contained in this Opinion is fully taken into account.

Yours sincerely,

(signed)

Wojciech Rafal WIEWIÓROWSKI

Cc.: Bo Balduyck, DPO

² cf. Common Commission-Level Retention List for European Commission Files - SEC(2012) 713 (first revision)