



**WOJCIECH RAFAŁ WIEWIÓROWSKI**  
ASSISTANT SUPERVISOR

Ms Cristina ROMAY LOPEZ  
Head of Unit A1  
Human Resources and Internal  
Support  
European Maritime Safety Agency  
Praça Europa 4  
1249-206 Lisboa  
PORTUGAL

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Please use [edps@edps.europa.eu](mailto:edps@edps.europa.eu) for all  
correspondence

**Subject: Prior checking notification concerning promotion and reclassification**

Dear Ms Romay Lopes,

I am writing in relation to the notification for prior checking concerning promotion and reclassification procedures submitted to the European Data Protection Supervisor (EDPS) by the Data Protection Officer (DPO) of the European Maritime Safety Agency (EMSA) on 20 April 2016.

We note that the aforementioned procedures are in most aspects in compliance with Regulation (EC) N° 45/2001<sup>1</sup> (the Regulation) as outlined in the EDPS Staff Evaluation Guidelines<sup>2</sup> and we will therefore only address the aspects which do not seem to be fully compliant in this respect.

## **I. Facts and analysis.**

### **I. 1. Data conservation.**

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<sup>1</sup> 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

<sup>2</sup> EDPS Guidelines on the processing of personal data in the area of staff evaluation of 15 July 2011 (EDPS 2011-0042), available at:

[https://secure.edps.europa.eu/EDPSWEB/webdav/site/mySite/shared/Documents/Supervision/Guidelines/11-07-15\\_Evaluation\\_Guidelines\\_EN.pdf](https://secure.edps.europa.eu/EDPSWEB/webdav/site/mySite/shared/Documents/Supervision/Guidelines/11-07-15_Evaluation_Guidelines_EN.pdf)

According to the information provided in the notification, promotion decisions as well as reclassification related contract amendments are placed in personal files where they are kept for ten years after termination of employment or last pension payment, in accordance to Article 26 of the Staff Regulations<sup>3</sup>.

Furthermore, it is mentioned that no time limit for the conservation of data processed in the context of the related appeal procedure has been established insofar by EMSA.

We recall that pursuant to Article 4(1)(e) of the Regulation personal data can be kept for no longer than necessary for the purpose for which they were collected or further processed.

The EDPS establishes that no sufficient evidence has been provided to demonstrate the necessity of the lengthy storage described above extending beyond the entire career. Therefore, we invite EMSA to shorten the existing time limit or to provide precise justification in this respect.

Moreover, EMSA should establish a maximum time limit for the conservation of the personal data processed by EMSA in the context of the appeal procedure.

## **I. 2. Information to data subject.**

Most information required in terms of Article 12 of the Regulation is provided in the form of a disclaimer on data protection made available on the promotion and reclassification section of the EMSA Intranet. We also note that, according to the notification, detailed information concerning processing of personal data in specific human resources exercises can be found on the DPO website.

However, the information about the legal basis of the processing as well as the time limits for storing of data processed in this context is missing.

Moreover, the information about the rights of data subject seems to be misleading. In particular, the disclaimer mentions that *the staff members can have access to their data and can exercise their rights in relation to this data as provided in Articles 13 - 20 of Regulation 45/2001. For this reason, they can address themselves to the Delegated Controller of the data, Head of Human Resources Unit.* At the same time, the notification specifies that the way to make use of the data subject rights is by *email to the Career Development Manager, stating their need and justifying it.* Finally, the notification also states that *if the data subject makes a request to the data controller orally or in written form, the controller will facilitate the exercise of the applicant's right to access the data.*

The EDPS recommends that the information about **the legal basis** of the processing as well as **the conservation time limits** is added to the existing disclaimer. Moreover, the **information** provided therein about the data subjects' rights should be simplified by:

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<sup>3</sup> Cf. the follow up to the EDPS opinion on annual career development exercise at the EMSA in case 2007-0568

- making reference to the right of access under Article 13 of the Regulation and the right to rectify factual data under Article 14 of the Regulation, and
- making clear that the right of rectification only covers factual data and that the (by nature subjective) evaluation can only be rectified by the way of appeal within the respective promotion or reclassification procedure;
- clarifying the entity to which data subjects may address their requests for access and rectification, as well as their requests for appeal.

## **II. Conclusion**

In conclusion, the EDPS considers that there is no reason to believe that there is a breach of the Regulation provided that all considerations contained in this Opinion are fully taken into account. In particular, EMSA should:

1. shorten the existing conservation time limit for the promotion decisions and reclassification related amendments of the employment contracts or, alternatively, provide precise justification in this respect;
2. establish a maximum time limit for the conservation of data processed in the context of the related appeals;
3. revise the existing data protection disclaimer in a manner outlined above.

The EDPS expects that EMSA implementation and documentary evidence thereof within three months of the date of this Opinion.

Yours sincerely,

Wojciech Rafał WIEWIÓROWSKI

**(signed)**

Cc: Ms Radostina Nedeva-Mägerlein, DPO