

Internal rules on restriction of data protection rights

54th Meeting of the Management Board 19-20 June 2019

Proposal

The Management Board is invited to adopt the internal rules on restriction of data protection rights.

Background

Under the EU Data Protection Regulation¹, all individuals whose personal data is collected by the Agency have certain rights in that respect:

- A right to be informed about the processing of their personal data;
- A right to access and rectify their own personal data;
- Etc.

With the entry into force of the revised data protection regulation applicable to EU institutions on 11 December 2018, a higher threshold was introduced to impose any restrictions to these data protection rights. Before the revision, an internal rule of an EU institution or agency could introduce restrictions. Now only a legal act can do so, or an internal rule of the EU institution or agency, but only if it complies with the conditions of Article 25 of the above said Regulation, it is adopted at the highest level of management of the EU institution or agency, consulted with the European Data Protection Supervisor² and published in the Official Journal of the EU.

Rationale

In certain sensitive procedures of internal administration of the Agency, there may be justified reasons why a certain data protection right may need to be temporarily restricted. E.g. the right to be informed about the processing or to access the file may have to be temporarily restricted in the following processes:

- a) the performance of administrative inquiries and disciplinary proceedings;
- b) preliminary activities related to cases of potential irregularities reported to OLAF;
- c) whistleblowing procedures;
- d) (formal and informal) procedures for cases of harassment;
- e) processing internal and external complaints;
- f) internal audits;
- g) the investigations carried out by the Data Protection Officer; and
- h) (IT) security investigations handled internally or with external involvement (e.g. CERT-EU).

The proposed internal rule provides the legal framework for regulating in a robust manner how such restrictions could be applied in those processes, including strict controls, such as a duty to justify and document any restriction, a mandatory communication of any restriction to the Agency's Data Protection Officer (independent advisory function) and a duty to revise any restriction whenever the justification no longer exists and at the latest after six months.

¹ Regulation (EU) 2018/1725 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data.

² The EU supervisory authority on data protection compliance by the EU institutions and agencies.

The proposed internal rules are based (without modifications) on a template developed by a working group of Data Protection Officers from the various EU agencies, which in itself was based on a template provided by the European Data Protection Supervisor. The draft has already been given the green light by the European Data Protection Supervisor (EDPS) after a formal consultation, as required. Also the ECHA Staff Committee has been consulted on the draft. The draft decision hereby proposed for adoption (attachment 2) takes into account all comments received.

Alternative options

As it may be necessary to restrict certain data protection rights in certain limited situations, it is crucial to establish a legal basis for such restrictions in line with the revised EU data protection regulation. Therefore, there seem no immediate alternative options available.

However, it has to be clear that the internal rules are not to be seen as a “carte blanche” for the Agency to restrict data protection rights at will. It can only be applied in a limited number of processes, when justified and proportionate and applying the strict controls included in the rules.

Also the European supervisory authority on data protection, the EDPS, recognises this need and has already given the green light to these draft internal rules (see annex).

Drawbacks

While the internal rules include restrictions to important rights of individuals, these may be necessary to protect the rights and freedoms of other individuals (e.g. the identity of a whistleblower) or to protect the effectiveness of investigations.

Attachments:

- Annex 1: EDPS opinion on the draft internal rules of 14 May 2019
- Annex 2: Draft Management Board decision on internal rules concerning restrictions of certain rights of data subjects in relation to processing of personal data in the framework of the functioning of the European Chemicals Agency

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