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**Subject: Third revision of the Common Retention List of the European Commission
(Case number 2022-0659)**

Dear [REDACTED],

Thank you for your consultation on the revised Common Retention List (CRL) for Commission files under Article 41(1) of Regulation (EU) 2018/1725¹ (the Regulation), received on 20 June 2022.

I. Factual background

The Commission informed the EDPS concerning the third revision of its CRL in accordance with Article 41(1) of the Regulation. The EDPS has subsequently conducted an analysis of each type of processing as indicated in the revised CRL in comparison with the CRL adopted in 2019. The EDPS has also assessed whether the recommendations of 2019² communicated to the Commission in the context of the second revision of the CRL have been implemented.

In July 2022, the EDPS requested clarifications from the Commission concerning some retention periods included in the CRL. In October 2022, the Commission responded to the clarification request, provided further information and sent to the EDPS an updated version of the CRL, incorporating changes after the inter-service consultation.

¹ OJ L 295, 21.11.2018, p. 39–98.

² https://edps.europa.eu/sites/default/files/publication/19-04-03_letter_crl_2019-0242_en.pdf

In November 2022, the EDPS and the Commission held meetings to discuss specific retention periods which required further justifications as they did not seem to be in line with Article 4(1)(e) of the Regulation and the EDPS recommendations of 2019 on the second revision of the CRL. Following such meetings, in November and December 2022, the Commission followed up with additional justifications on specific retention periods.

Without prejudice to the recommendations included in this letter, the CRL should be seen as a living document and the Commission should continue adapting the retention schedule in compliance with the Regulation, in close cooperation with the DPO service and SG.C1 Unit. For the sake of clarity, it should be noted that the CRL concerns retention periods for the elimination of files, while the EDPS recommendations are limited to the personal data included in such files.

II. General EDPS comments on retention periods

The Commission, as controller, is responsible under Article 4(1)(e) of the Regulation for adopting a maximum retention period for the personal data undergoing processing in the context of a specific processing operation which is necessary and proportionate to the purpose for which the personal data are processed (“storage limitation”). In light of the accountability principle³, the Commission should be able to demonstrate compliance with the storage limitation principle and should document its assessment on the criteria followed to determine the retention periods for each file. It should also implement appropriate technical and organisational measures for all processing operations in accordance with the Regulation.⁴

This means that each service at the Commission, as a controller, should set up a maximum retention period which is as long as necessary with regard to the purpose for which the data were collected, and as short as possible to ensure that it is not excessive to the purpose of the processing. Additionally, the Commission as a controller should take all reasonable steps to minimise any risk to the data subject rights and ensure that they are adequately protected. While it may be justified that the Commission keeps personal data for a certain period to prove that the Commission acted properly in the context of a given process, keeping personal data for excessively long retention periods (for instance, beyond the limits for reacting to appeals or complaints), is clearly in violation of Article 4(1)(e) of the Regulation. It also means that the Commission should not maintain, acquire or process additional information in order to identify the data subject for the sole purpose of complying with the Regulation.⁵ This idea would also contradict Article 4(1)(c) of the Regulation (“data minimisation principle”).

Since each controller within the Commission is in charge of the different procedures, it is in the best position to know the business needs, as well as to determine whether there are any legal requirements that justify keeping personal data for a certain period of time. Therefore, it is up to the controller to assess the necessary retention periods for the different categories of personal data undergoing processing in view of minimising the risks to data subjects, to adopt specific maximum periods, to justify them and to document the procedure. The controller, via that documentation would be able to **ensure** that the retention period adopted is appropriate, as well as **verify** and **demonstrate** that it achieved compliance with

³ Articles 4(2) of the Regulation.

⁴ Article 26 of the Regulation.

⁵ See Article 12(1) of the Regulation.

the Regulation. Such documentation would also enable the controller to deal better with data subjects' requests, complaints or EDPS audits.

Against this background, as a general remark, in order to ensure compliance by the Commission with Articles 4(1)(e) and 4(2) of the Regulation, the EDPS **deems it necessary that the Commission explains the rationale behind *each* retention period** (i.e. why it is necessary to keep personal data for the purpose they are processed for a given period of time), **states clearly when each retention period starts and put in place safeguards to erase personal data before the end of the retention period, where appropriate.** The CRL does not currently include the above elements. Such clarifications could e.g. be included in an accompanying document to the CRL.

Furthermore, the EDPS recommends that the Commission include a specific reference to the retention periods that are applicable for the *personal data* included in a given file, in line with the respective record of processing operations⁶, in order to clarify when the T⁹ administrative procedure would be initiated.⁷ **The EDPS deems it necessary that the above shortcomings are addressed before the final adoption of the CRL.**

Additionally, the EDPS recommends that the Commission confirm that its IT systems are properly updated to ensure that retention periods are implemented accordingly, in a secure and verifiable manner.

Comments and recommendations regarding specific retention periods are presented as an annex to this letter. However, taking into consideration that the CRL does not currently make reference to the criteria used to define *each* retention period, the EDPS is not in a position to make a thorough and definite assessment on whether the Commission has complied with Article 4(1)(e) of the Regulation when defining every single retention period. For this reason, the fact that the EDPS does not provide comments on every single retention period should not be construed as an implicit endorsement of the retention periods for which the EDPS does not provide specific recommendations.

The EDPS remains at your disposal for any clarifications.

Yours sincerely,

[e-signed]

Leonardo CERVERA NAVAS
Head of EDPS Secretariat (Acting)

⁶ Article 31 of the Regulation.

⁷ As explained by the Commission in its communication of 17.06.2022 (Ref. Ares (2022)4491389-17.06.2022), "The new T⁹ allows for the elimination of records containing more "sensitive" personal data (e.g. behavioural data, financial data and the special categories of personal data mentioned in Article 10 of Regulation (EU) 2018/1725) during the ARP in line with the period mentioned in the relevant record of processing."

Cc:

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Annex

Comments and recommendations regarding specific retention periods

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1) 2.7.2 – Management of independent experts.

The retention period for unsuccessful candidates/non-contracted experts is five years.

Based on the corresponding record of processing operations, the data protection notice and clarifications provided by the Commission, the retention period starts following the end of the Multi-Annual Financial Framework (MFF) period during which the expert has registered or at the end of the following MFF if they have explicitly agreed that their personal data are kept until then.⁸

⁸ The EDPS' understanding is that such agreement provided by the data subject is supposed to qualify as consent, within the meaning of Article 5(1)(d) of the Regulation.

The EDPS asked the Commission to explain why the EDPS recommendation of 2019 for a two-year retention period for unsuccessful candidates had not been implemented. The Commission explained that the call for expression of interest for independent experts is an open call that is valid for the entire duration of the MFF 2021-2027. While a candidate may not be initially selected to become an evaluator for proposals, there is still the possibility that their application becomes successful at a later stage. In accordance with the Commission, it would not be helpful for an expert to indicate from the onset that in case they are not selected, their personal data will be immediately erased. This is because there might be other selection procedures to which they could participate during the corresponding MFF.

While the EDPS understands that for the reasons explained by the Commission, personal data of unsuccessful experts are kept for the duration of the corresponding MFF, it is still unclear why their personal data are kept for five years after the end of the MFF. In particular, it is unclear under which circumstances processing of such personal data would be necessary for budgetary discharge, control and audit purposes.

- In this vein, the EDPS recommends the Commission to reconsider the retention period concerning personal data of unsuccessful candidates. If the Commission concludes that the retention period of five years is necessary, it should document its assessment accordingly in light of the purpose for which such data are processed.
- Additionally, the EDPS recommends that the Commission clarify in the CRL the difference between T³ and T⁴ procedures that seem to be applicable for unsuccessful candidates. In accordance with T³ procedure, all records related to **unsuccessful candidates** are erased after three years, while in accordance with T⁴ procedure, all files related to **unsuccessful experts** are deleted five years after the end of the particular procedure to allow for all possible appeals. For the sake of clarity, the EDPS recommends that the Commission includes explanations in the CRL to determine the difference between unsuccessful candidates and unsuccessful experts, and clearly indicate when each retention period starts counting.
- Finally, the EDPS recommends that the Commission provide for the possibility that unsuccessful experts/non-contracted experts can have their personal data erased on request before the five year retention period, in case they do not wish to participate in any other selection procedure.

2) 8.3.3 Trade relations with third countries and trade defence

The retention period for files related to trade relations with third countries and trade defence is ten years.

The EDPS asked the Commission to clarify why it extended the retention period from five years to ten years.

The Commission conducted further inquiries and decided that the retention period of five years is sufficient. Therefore, the retention period will not be extended to ten years.

- The EDPS welcomes the fact that the Commission reconsidered its approach and recommends that the CRL be updated accordingly.

3) 9.2.3 Visits to the Commission

The retention period concerning files related to visits to the Commission is set to 10 years. The Commission added the T⁹ administrative elimination procedure to this category of files, which allows for the deletion of personal data in line with the retention periods determined in the records of processing operations of visits to Commission buildings, which is one year for visitors and five years for the group leader.

The EDPS asked the Commission to justify why it deemed necessary to keep the personal data of the group leader for five years. As a follow-up to the discussions with the EDPS, the Commission reconsidered its retention period and decided that the necessary retention period for keeping the respective personal data is two years after the visit, instead of five years. It argued that the two-year retention period is necessary in case there are future inquiries or follow-up to the visit, considering that the group leader is the main contact point between the Commission and the rest of the visitors' group.

- The EDPS considers that the justification for the two-year retention period concerning personal data of the group leader is satisfactory and asks the Commission to update the CRL accordingly.

4) 9.5.3 - Requests for patronage and/or use the European emblem

The retention period for files related to requests for patronage and/or use of the European emblem is five years.

The EDPS asked the Commission to clarify why the retention period has been extended from two to five years.

The Commission responded that based on practical experience, the administrative retention period of two years is not sufficient. The Commission needs to be able to check whether a patronage request has already been asked in the past to ensure coherence over time and to avoid recurrent patronages.

- The EDPS considers that the justification provided by the Commission is satisfactory.

5) 9.5.5 - Applications for the exercise of data subject rights.

The retention period for files related to applications for the exercise of data subject rights is set to ten years.

The EDPS sought for explanations regarding the reasons that the retention period had been extended to ten years, while under the CRL of 2019, the retention period was five years. The Commission clarified that in the CRL of 2019, the retention period for the above files was five years, followed by their transfer to the historical archives. Under the draft CRL, the files will not be transferred to the historical archives for permanent preservation, but they will be erased after ten years. The Commission highlighted that it is necessary to have access to the respective files for a sufficient period of time. For this reason, the Commission deemed necessary to extend the retention period from five to ten years. Additionally, the

Commission introduced the T⁹ administrative elimination procedure in this category to allow deletion of personal data, if applicable.

- **The EDPS' assessment is that the ten-year retention period for applications for the exercise of data subject rights is not justified and appears to be too lengthy.** Still, the EDPS welcomes the fact that the Commission has put in place safeguards to ensure that personal data will be deleted *before* the ten-year retention period, if they are not necessary for the purpose for which they are processed.
- Therefore, **the EDPS recommends that the Commission carry out a renewed assessment to set clear criteria to determine when personal data processed in the context of the exercise of data subject rights should be deleted** in accordance with the T⁹ administrative elimination procedure and make a reference to the corresponding record of processing operations in the CRL.

6) 9.5.6 - Complaints to the Commission about maladministration: infringements of data protection rules.

The retention period for files concerning admissible complaints is set to ten years, while the retention period for inadmissible complaints is set to five years.

The EDPS asked the Commission to clarify why the retention period for admissible complaints had been extended to ten years, while the respective retention period in the CRL of 2019 is five years. The Commission replied that in the CRL of 2019, the retention period of five years was followed by a transfer of the files to the historical archives. Under the updated CRL, the respective files will no longer be transferred to the historical archives, but they will be erased at the end of the retention period of ten years. For this reason, the Commission deemed necessary to have access to the files for a sufficient period of time and extended the retention period. Additionally, the Commission introduced the T⁹ administrative elimination procedure in this category to allow deletion of personal data, if applicable.

- The EDPS welcomes the fact that the Commission has in place safeguards to ensure that personal data will not be kept for ten years, if they are not necessary for the purpose for which they are processed.
- However, it is unclear why the Commission assessed that the retention period for complaints to the Commission about maladministration - Infringements of the Code of Good Administrative Behaviour (9.5.4) is set to three years, while the retention period for complaints related to infringement of data protection rules is much lengthier. In that regard, **the EDPS recommends that the Commission carry out a renewed assessment on the necessity to keep such files for ten years**, set clear criteria to determine when personal data processed in the context of complaints about maladministration should be deleted in accordance with the T⁹ administrative elimination procedure and make a reference to the corresponding record of processing operations.

7) 12.3.4 E - Files of candidates for posts as Accredited Conference Interpreters (ACIs).

The retention period for files of candidates for posts as Accredited Conference Interpreters is twenty years from the date of the last test (for candidates who took part in an accreditation test) or from the date of the last correspondence with the Inter-institutional Test Office.

In 2006, the EDPS issued an opinion on a notification for Prior Checking received from the Deputy Data Protection Officer of the European Commission on the "Management of personal data of Auxiliary Conference Interpreters (ACI) stored in Signalétique (application of the central database CORALIN).⁹ In the context of this opinion, the Commission mentioned the need to establish a long retention period of the personal data in question, as processing of such data is necessary in case the interpreters request the "reconstructing of their career".¹⁰

- However, the EDPS notes that the necessity to keep personal data contained in files of candidates for posts as Accredited Conference Interpreters for twenty years has not been established.
- Therefore, **the EDPS recommends that the Commission re-assess whether it is necessary to keep such personal data for twenty years**, taking into consideration that the retention periods concerning files of other categories of candidates (e.g. officials), is much shorter.¹¹

8) 12.3.7 - Personnel files

The retention period for personnel files is 8 years **after the extinction of all rights** of the person concerned and of any dependants, and **at least 100 years** after the recruitment of the person.

The EDPS requested clarifications on the need to keep personnel files for at least 100 years after the recruitment of the person, as this retention period appeared to be excessively long. The Commission provided some examples to justify why, in certain cases, the retention period of 100 years may be necessary. The examples provided related to situations where, for instance, the descendant of an official may be considered a dependent child on charge during their whole lifetime.

The EDPS notes that general retentions periods cannot not be established using by reference exceptional cases. Consequently, the 100-year retention period cannot be established as a general rule, as it seems that the cases presented by the Commission concern exceptional circumstances which do not represent the average pattern. Establishing a 100-year retention period for all staff members - including those that do not have any dependent children - contradicts the storage limitation principle.¹²

⁹ Available at https://edps.europa.eu/sites/edp/files/publication/06-12-22_commission_interpreters_en.pdf

¹⁰ Idem, p. 12.

¹¹ See 12.3.4. D, where the retention period for files on candidates for posts as official, contract or temporary staff (including temporary interpreters and translators) - Reserve list is two years.

¹² Article 4(1)(e).

As a general rule, the Commission should not keep personal data included in personnel files after the extinction of rights of the individuals concerned.

- Against this background, **the EDPS deems necessary that the Commission make the relevant distinctions between different categories of staff members, taking into consideration that their financial rights may differ and adapt the respective retention periods, accordingly.** For instance, the Commission may conclude that there is a need to establish shortened retention periods for staff members without any dependents. In this vein, the EDPS deems necessary that the Commission adopt a granular approach and make relevant distinctions between different categories of documents that are kept in the personnel files. For instance, the Commission may conclude that certain documents, such as appraisal reports, are kept for shortened retention periods in comparison to career-related personal data that are necessary for establishing pension rights.
- Additionally, **the EDPS recommends that the Commission put in place technical and organisational measures to extend retention periods in exceptional circumstances** to safeguard the rights of the staff members concerned and/or their dependants in addition to procedures to assess, on a regular basis, whether the data must be deleted or whether the circumstances that justified such longer retention periods continue to exist. For instance, the Commission may conclude that it is necessary to establish longer retention periods for situations where the descendant of a staff member may be considered a dependent child on charge during their whole lifetime. Nonetheless, such exceptional circumstances do not justify the establishment of lengthy retention periods for all personnel files as a general rule.
- Taking these elements into consideration, **the EDPS deems necessary that the Commission re-consider its retention period of 100 years after the recruitment of the staff member and sets out considerably shorter retention periods as a general rule.**

9) 12.3.11 - Medical files

The retention period for staff medical files is 30 years after the termination of duties of the person concerned (and at least 40 years after exposure for workers who have been exposed to carcinogens or mutagens) and, in any event, at least until the person concerned reaches the age of 75. The retention period for childcare medical files is 30 years after the last consultation or medical visit of the child.

- Overall, the EDPS welcomes the fact that the Commission introduced the T⁹ administrative elimination procedure in this category to allow deletion of personal data before the expiration of the retention period, if applicable.
- Concerning childcare medical files, **the EDPS considers that the retention period of 30 years after the consultation or medical visit of the child is excessively long.** The EDPS recommends that the service in charge of nurseries communicate to the parental responsibility holders the possibility of receiving the medical files of

their children. The Commission should immediately destroy the respective medical files as soon as they are handed over to the parental responsibility holders.

- Furthermore, the EDPS highlights that the comments and recommendations included hereunder concern solely the general retention periods for medical files included in 12.3.11 category of the CRL, and are without prejudice to any future EDPS assessment regarding retention periods that may concern sub-categories of medical files, established by the Commission medical service.

10) 12.3.13 - Complaints under Article 90(2), etc. of the Staff Regulations.

The retention period for files related to complaints under Article 90(2) of the Staff Regulations is five years.

However, the Commission informed the EDPS that DG HR did not agree with the retention period of five years, and suggests a retention period of ten years, as there are files for which there is the risk of litigation and the process may last for several years in case of a subsequent appeal to the Court of Justice of the European Union. The content of these files is used by the Commission for reference purposes to ensure consistent application of the applicable legal framework. The T⁹ administrative elimination procedure is applicable in this category to allow deletion of personal data before the expiration of the retention period, where relevant.

The EDPS notes again that general retentions periods cannot not be established using by reference exceptional cases.

- **The EDPS recommends that the Commission assess the applicable limitation periods for the commencement of legal actions related to complaints under Article 90(2), etc. of the Staff Regulations.** In case a legal action is brought before the competent Courts before the expiration of the retention period, the Commission should put in place safeguards to ensure that the retention periods are extended accordingly, as long as the legal proceedings are ongoing.
- Additionally, **the EDPS recommends that the Commission establish criteria to define where personal data should be erased in accordance with the T⁹ administrative elimination procedure** and make a reference to the corresponding record of processing operations.

11) 12.3.14.B - Financial and psychosocial assistance

The retention period for files related to financial and psychosocial assistance is three years after the death of the person eligible to receive financial aid.

The Commission added the T⁹ administrative elimination procedure in this category.

The EDPS welcomes the fact that the Commission added T⁹ administrative elimination procedure in this category to allow deletion of personal data before the expiration of the retention period, if applicable.

- Nonetheless, **the EDPS deems it necessary that the Commission justify why it is essential to keep the related files for three years after the death of the person concerned**, as this retention period appears to be overly long.
- Additionally, **the EDPS recommends that the Commission establish criteria to define where personal data should be erased** in accordance with the T⁹ administrative elimination procedure and make a reference to the corresponding record of processing operations.

12) 12.3.12.D - Special leave

The retention period for files related to special leave is five years.

The EDPS asked the Commission to justify this retention period.

The Commission indicated that the content of these files needs to remain accessible during the indicated retention period to be able to recalculate the rights of staff members.

- The EDPS considers that the justification provided by the Commission for the determination of this retention period is satisfactory.
- Nonetheless, **the EDPS recommends that the Commission ensure that personal data that are no longer necessary for the recalculation of rights of staff members are deleted before the end of the retention period**. In particular, the EDPS considers that it is unlikely that sensitive categories of data¹³ (e.g., medical certificates) processed in the context of granting special leave are necessary for the recalculation of rights of staff members. Therefore, they should be deleted as soon as they are no longer necessary.
- The EDPS takes note of the fact that the Commission introduced the T⁹ administrative elimination procedure for this category of files. However, **the EDPS recommends that the Commission establish criteria to define where personal data should be erased in accordance with the T⁹ administrative elimination procedure** and make a reference to the corresponding record of processing operations.

13) 12.4 - Professional conduct and discipline

The retention period for files related to professional conduct and discipline (pre-inquiry files) is five years for files that have not given rise to administrative investigations, 15 years for files related to investigations without disciplinary consequences and 20 years for files related to disciplinary procedures.

The EDPS requested clarifications on the reasons that the Commission had not implemented his recommendations received in the context of the second revision of the CRL.¹⁴ Additionally, the above retention periods do not reflect the recommendations included in

¹³ Article 10(1) of the Regulation.

¹⁴ Available at : https://edps.europa.eu/sites/default/files/publication/19-04-03_letter_crl_2019-0242_en.pdf

the EDPS guidelines on processing personal information in administrative inquiries and disciplinary proceedings¹⁵.

According to the above recommendations and the EDPS guidelines, the general retention periods for files related to professional conduct and discipline (pre-inquiry files) should be as follows:

a) Files related to professional conduct and discipline (pre-inquiry files): Such files concern cases where the EU Institution makes a preliminary assessment of the information collected and the case is dismissed. In such cases, the EU Institution should set up a maximum retention period of **two years** after the adoption of the decision that no inquiry will be launched. This maximum retention period could be necessary for audit purposes, access requests from affected individuals (i.e. from an alleged victim of harassment) and complaints to the Ombudsman.

b) Files related to investigations without disciplinary consequences (inquiry files): When the EU Institution launches an inquiry including the collection of evidence and interviews of individuals, there could be three possibilities: i) the inquiry is closed without follow-up, ii) a caution is issued or iii) the Appointing Authority of the EU institution adopts a formal decision that a disciplinary proceeding should be launched. For cases i) and ii), a maximum of **five-year-period** from closure of the investigation is considered to be a necessary retention period, taking into account audit purposes and legal recourses from the affected individuals. For case iii), the EU Institution should transfer the inquiry file to the disciplinary file, as the disciplinary proceeding is launched on the basis of the evidence collected during the administrative inquiry.

c) Files related to disciplinary procedures (cases where the EU Institution is in charge of the disciplinary proceeding). In such cases, the EU Institution carries out a disciplinary proceeding with the assistance of internal and/or external investigators on the basis of a contract. The EU Institution should take into consideration the nature of the sanction, possible legal recourses as well as audit purposes and set up a maximum retention period, after the adoption of the final Decision. If the staff member submits a request, under Article 27 of Annex IX to the Staff Regulations, for the deletion of a written warning or reprimand (3 years after the Decision) or in the case of another penalty (6 years after the Decision, except for removal from post) and the Appointing Authority grants the request, the disciplinary file which led to the penalty should also be deleted.

If the Decision on the penalty stored in the personal file is deleted, there is no reason to keep the related disciplinary file. In any case, the EU Institution could grant the possibility to the affected individual to submit a request for the deletion of their disciplinary file 10 years after the adoption of the final Decision. The Appointing Authority should assess whether to grant this request in light of the severity of the misconduct, the nature of the penalty imposed and the possible repetition of the misconduct during that period of 10 years.

d) Disciplinary file (for which IDOC is in charge of the disciplinary proceeding): The EU Institution concluded a SLA with IDOC to carry out the disciplinary proceeding and the EU Institution would transfer the evidence collected to IDOC. The EU Institution should adopt a retention period in light of the outcome of the disciplinary proceeding carried

¹⁵ Available at: https://edps.europa.eu/sites/edp/files/publication/16-11-18_guidelines_administrative_inquiries_en.pdf

out by IDOC; as soon as IDOC adopts its final Decision and conclusions, all information kept by the EU Institution before their transfer to IDOC, should be erased.

IDOC responded to the EDPS request and argued that it is necessary to keep the personal data concerning pre-inquiry files and inquiry files for five and 15 years, respectively, as there are cases where Court proceedings may be initiated after the expiration of the retention periods recommended by the EDPS and the related evidence should be kept to be used in Court. Hence, the respective retention periods of two and five years are not sufficient. Additionally, IDOC pointed out that the retention period for dismissed cases and investigations in the case of OLAF is 15 years. Therefore, IDOC suggested that the retention period for IDOC inquiry files should be aligned with the retention period for OLAF files concerning dismissed cases and investigations (4.5.1 in the CRL).

- Concerning pre-inquiry files, **the EDPS considers that the retention period of five years is too long, and would be in breach of Article 4(1)(e) of the Regulation.** It is not likely that the individual concerned would take any legal action taking into consideration that the related files have not given rise to administrative investigations. **The EDPS recommends that** in case court proceedings are initiated concerning pre-inquiry files or any other cases where pre-inquiry files may be used as evidence in Court proceedings, IDOC should put in place safeguards to be able to extend the retention period accordingly. In case IDOC has specific cases where Court proceedings were initiated after the suggested retention period of two years, and where it was necessary to use pre-inquiry files as evidence, it should document these specific examples that would justify a longer retention period for such files.
- Concerning files related to investigations without disciplinary consequences (inquiry files), **the EDPS recommends that IDOC assess the applicable limitation periods for commencing legal actions related to inquiry files and ensure that personal data are deleted when the limitation periods expire.** In case a legal action is brought before the competent Courts before the expiration of the retention period, IDOC should put in place safeguards to ensure that the retention periods are extended accordingly, as long as the legal proceedings are ongoing.
- Concerning disciplinary files, **the EDPS recommends that the respective Commission department as well as IDOC put safeguards in place to ensure that personal data are erased before the retention period of 20 years in accordance with the above-mentioned guidelines (see paragraphs c and d above).**

14) 12.5.4 - Security inquires with follow-up and analyses in the field of counter-intelligence and counter-terrorism

The retention period for files concerning security inquires with follow-up and analyses in the field of counter-intelligence and counter-terrorism is maximum 15 years.

The EDPS asked the Commission to clarify why the retention period has been extended from 10 to 15 years.

The Commission responded that the retention period has been aligned with the retention periods for other inquiry/investigation files. This retention period is also necessary to be able to respond to requests for information, requests for access to document and testimonials coming from Courts, both at national and EU level.

- The EDPS considers that the justifications provided by the Commission are satisfactory.

15) 12.7.2 - Accounting

The retention period for files related to accounting is ten years.

The EDPS asked the Commission to clarify why the retention period had been extended from five to ten years.

The Commission responded that in accordance with the CRL of 2019, files were transferred to the historical archives. In accordance with the updated CRL, files will be eliminated after the retention period. For this reason, the Commission considers that it is justified to extend the retention period. To ensure that personal data are not retained when they are no longer necessary, the Commission added the T⁹ administrative elimination procedure to ensure that personal data are erased when they are no longer necessary.

- The EDPS welcomes the fact that the Commission added the T⁹ administrative elimination procedure. Nonetheless, **it recommends that the Commission establish criteria to determine when personal data are deleted** in accordance with this procedure and make a reference to the corresponding record of processing operations.
- Additionally, **the EDPS recommends that the Commission justify and document the need to keep the related files for ten years**, as it is unclear whether this retention period is based on certain legal requirements or it has been calculated on the basis of business needs.

16) 12.9.4 - Implementation of rules on data protection

The retention period for files related to the implementation of rules on data protection is five years.

The EDPS asked the Commission to justify this retention period and whether personal data are included in the respective files.

The Commission clarified that the related files are policy implementation files that document how the Commission implements the Regulation via instructions and guidelines. These files do not contain personal data.

- Therefore, the EDPS does not have any comments on this retention period.

17) 12.9.5 Management of personal data breaches

The retention period for files related to the management of personal data breaches is five years.

Considering that this is a new category, the EDPS asked the Commission to clarify the criteria it took into consideration for defining this retention period. The Commission responded that this retention period guarantees that it can access the content of these files for reference purposes and thus, ensure a consistent application of the Regulation over time.

The Commission added the T⁹ administrative elimination procedure in this category.

- The EDPS welcomes the fact that the Commission added the T⁹ administrative elimination procedure in this category to allow deletion of personal data before the expiration of the retention period, if applicable.
- **The EDPS recommends that the Commission establish criteria to define where personal data may not be needed and hence, should be erased** in accordance with the T⁹ administrative elimination procedure and make a reference to the corresponding record of processing operations.

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