

REGISTER NUMBER: 648

NOTIFICATION FOR PRIOR CHECKING

Date of submission: 05/10/2010

Case number: 2010-765

Institution: EUROFOUND

Legal basis: article 27-5 of the regulation CE 45/2001⁽¹⁾

(1) OJ L 8, 12.01.2001

INFORMATION TO BE GIVEN⁽²⁾

- Initial Notification of Inquiry notice
- Investigator Appointment for Administrative Inquiry letter
- Procedure Note for Administrative inquires & Disciplinary Proceedings

(2) Please attach all necessary backup documents

1/ Name and address of the controller

Ray Comerford, Head of Human Resources, EUROFOUND

2/ Organisational parts of the institution or body entrusted with the processing of personal data

Human Resources Unit

3/ Name of the processing

Administrative inquires and disciplinary proceedings

4/ Purpose or purposes of the processing

Due to the sensitive nature of the data that may be collected during the investigation of any administrative inquires which may be brought to the attention of the Head of HR or other parties involved in the inquiry or subsequent disciplinary proceedings, Article 27 of Regulation (EC) 45/2001 applies.

5/ Description of the category or categories of data subjects

All Eurofound staff, including contract employees, temporary employees, SNEs and trainees/interns, or any other person whose data may be processed during the investigation or proceeding (e.g. victim or witness)

6/ Description of the data or categories of data (including, if applicable, special categories of data (article 10) and/or origin of data)

The following data is collected as part of the inquires:

- 1 All personal information that is kept in the HR personnel file.
- 2 The Nature of inquiry or complaint and data regarding alleged complaints
- 3 Personal data regarding the Complainant – found in the HR personnel file.
- 4 Personal data related to Article 10(2) could be processed if part of the complaint or inquiry.

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5 Data relating to offences, criminal convictions or security measures, as authorised in accordance with Article 10(5) of Regulation (EC) 45/2001.

7/ Information to be given to data subjects

Yes - "The subject of an administrative inquiry or disciplinary proceeding shall have the right of access to his/her personal data and the right to rectify any such data that is inaccurate or incomplete. In addition, the subject shall be informed of the existence of the administrative inquiry or disciplinary proceeding (in line with Article 1 of Annex IX of the Staff Regulations and Article 29 of the Working Party), and of the opening and closing of an inquiry, the information regarding the hearing and its outcome."

8/ Procedures to grant rights of data subjects (rights of access, to rectify, to block, to erase, to object)

- When an administrative inquiry is opened, the data subject is sent an 'Initial Notification of Inquiry' letter which states the rights of access. It states: "The subject of an administrative inquiry or disciplinary proceeding shall have the right of access to his/her personal data and the right to rectify any such data that is inaccurate or incomplete. In addition, the subject shall be informed of the existence of the administrative inquiry or disciplinary proceeding (in line with Article 1 of Annex IX of the Staff Regulations, and Article 29 of the Working Party), and of the opening and closing of an inquiry, the information regarding the hearing and its outcome."
- All documentation will be made available to the subject, with the exception of documentation that could be presented as a safeguard to 'protect the rights and freedoms of others', as is in the case of whistleblowers, informants or witnesses. As noted in Article 29 of the Working Party.
- Should exceptions to rights of access be enforced "for the protection of the rights and freedoms of others" with respect to whistleblowers, informants or witnesses, a note will be placed in the Disciplinary file.
- To rectify any data, the subject should contact the controller.

9/ Automated / Manual processing operation

- All electronic documentation, including relevant emails, will be placed in a secure container in the TRIM system (an Electronic Records Management System), with restricted access rights granted.
- All members involved with the Administrative Inquiry or Disciplinary Proceeding will sign a Data Protection Letter, acknowledging their understanding that all data received should be used only for the purposes for which they were transmitted as it is explicitly stated in Article 7(3) of the European Regulation (EC) 45/2001.
- All paper copies will be held in a secure and locked location.
- Data relating to traffic data: Internet connections, e-mails or telephone usage is only collected if relevant to the nature of the inquiry, and will be processed in accordance with Articles 20 and 37 of Regulation 45/2001.

10/ Storage media of data

Data is stored on electronic files and on paper files. (Original letters of complaint, copies of all supporting documentation and any other documentation that is in paper format, is held by members of the HR disciplinary team in a secure location. All electronic files are stored in a secure container on the TRIM system.)

11/ Legal basis and lawfulness of the processing operation

- Article 27 of the European Data Protection Regulation (EC) 45/2001
- Article 7 of Regulation (EC) 45/2001
- Annex IX of the Staff Regulations
- Article 29 of the Data Protection Working Party

12/ The recipients or categories of recipient to whom the data might be disclosed

In accordance with Article 7(1) of Regulation 45/2001: Data will be transferred only if necessary to the performance of task. Recipients may include:

- Head of HR (Controller)
- The Director

- Head of Unit
- The Investigator(s) as appointed by the Director
- Other authorised HR staff
- Members of the Disciplinary Board
- Data Subject
- Other EU Bodies: OLAF, the European Ombudsman and the EDPS

13/ retention policy of (categories of) personal data

A separate Administrative and Disciplinary File is created for each inquiry.

Disciplinary files are stored for a period of 20 years if, following an administrative inquiry, a charge is brought against the staff member concerned, or until the final decision has been deleted from the personnel file; and for a period of five years for administrative inquiries without disciplinary follow-up, unless there is a repeat complaint.

Only a copy of the final decisions taken in a disciplinary proceeding, or copies of a final decision related to an acquittal should be inserted in the personnel file.

All personnel files are permanently retained.

A staff member against whom a disciplinary penalty other than removal from post has been ordered may, after three years in the case of a written warning or reprimand or after six years in the case of any other penalty, submit a request for the deletion from his personal file of all reference to such measure. The Appointing Authority decides whether to grant this request (With out prejudice to Article 27 of Annex IX to the Staff Regulations).

13 a/ time limits for blocking and erasure of the different categories of data (on justified legitimate request from the data subject)

(Please, specify the time limits for every category, if applicable)

- Should exceptions to rights of access be enforced “for the protection of the rights and freedoms of others” with respect to whistleblowers, informants or witnesses (Article 29 – Data Protection Working Party), a note will be placed in the Disciplinary file.

14/ Historical, statistical or scientific purposes

If you store data for longer periods than mentioned above, please specify, if applicable, why the data must be kept under a form which permits identification,

A note from the Director, stating the reason for holding data longer than the stated retention policy should be placed in the personnel file and noted on the Exceptions Register.

15/ Proposed transfers of data to third countries or international organisations

Data transfers to organisations outside Eurofound or other EU institutions and bodies occur only at the request of a national authority, in accordance with Article 9 of the Regulation. i.e. if there is an infringement of national or international law.

16/ The processing operation presents specific risk which justifies prior checking (please describe):

In accordance with Article 10(1) of Regulation 45/2001, Eurofound does not process any ‘special categories of data’ unless as an exception found under Article 10 (2) including: data relating to racial or ethnic origin, political opinions, religion or philosophical beliefs, trade-union membership or any data concerning health or sex life. Nor does Eurofound collect data relating to offences, criminal convictions or security measures, unless deemed necessary as part of the complaint or inquiry, as stipulated in Article 10(5) of Regulation 45/2001.

AS FORESEEN IN:

Article 27.2.(a)

Processing of data relating to health and to suspected offences, offences, criminal convictions or security measures,

If the nature of the administrative inquiry or disciplinary proceeding is justified in its inquiry, data may be processed with regard to the health, or to suspected offences, known offences, criminal convictions or security infractions.

Article 27.2.(b)

Processing operations intended to evaluate personal aspects relating to the data subject,

The process is designed to investigate and evaluate any administrative or disciplinary inquires, and will process data as it relates to the data subjects personal and professional behaviour as is outlined in the staff regulations Article 86, *“any failure of an official or former official to comply with his obligations under these Staff regulations, whether intentionally or through negligence on his part, shall make him liable to disciplinary action”*.

Article 27.2.(c)

Processing operations allowing linkages not provided for pursuant to national or Community legislation between data processed for different purposes,

With the exception of those provisions allowed under Annex IX of the Staff Regulations concerning linking data to national or community legislation, data will not be linked for any other purposes.

Article 27.2.(d)

Processing operations for the purpose of excluding individuals from a right, benefit or contract,

The process is not designed to exclude individuals from a right, benefit or contract; however, the process may investigate and evaluate allegations of such exclusions.

Other (general concept in Article 27.1)

- If during the course of an inquiry an on-the-spot inspection or interview is deemed necessary, the investigator(s) and the Head of HR are authorized to do so, provided the inspection falls within the guidelines of Article 8(2) of the European Convention on Human Rights (ECHR).
- While it is not Eurofound's policy to access a data subject's electronic mail or internet usage, in extraordinary circumstances, the investigator(s) may warrant an inspection if it is deemed necessary as part of the inquiry, keeping within the above mentioned guidelines.
- Eurofound does not have the capability to tape voice communication, and would not seek to do so as part of an inquiry.

17/ Comments

PLACE AND DATE: Dublin, 22 September 2010

DATA PROTECTION OFFICER: Markus Grimmeisen

INSTITUTION OR BODY: Eurofound