

REGISTER NUMBER: 666

NOTIFICATION FOR PRIOR CHECKING

Date of submission: 11/02/2011

Case number: 2011-0163

Institution: EFSA

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

(1) OJ L 8, 12.01.2001

INFORMATION TO BE GIVEN⁽²⁾

(2) Please attach all necessary backup documents

1/ Name and adress of the controller

Nicoline Le Gouriérec, Head of Human Resources Unit

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

Human Resources Unit

3/ Name of the processing

Administrative inquiries and disciplinary proceedings at EFSA

4/ Purpose or purposes of the processing

Processing of personal data, including personal data of a sensitive nature, in the context of administrative inquiries and disciplinary proceedings carried out at EFSA in compliance with the applicable regulatory framework.

5/ Description of the category or categories of data subjects

All statutory staff employed at EFSA, including officials, temporary agents and contract agents and any person whose data may be processed in the context of an inquiry 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 personal data is processed in the context of as part of an inquiry or proceeding:

- Information from the personal file of the person being investigated ;
- Information on the nature of inquiry or alleged complaint
- Personal data regarding the complainant, which may be data from this person's personal file .

It should be noted that in the context of administrative inquiries and disciplinary proceedings special data categories referred to in art. 10(1) of Regulation (EC) 45/2001 may be processed if this is necessary for the investigation in question. This extends to data relating to offences, criminal convictions or security measures, as authorised in accordance with Article 10(5) of Regulation (EC) 45/2001.

The Appointment document of members of an Investigation Panel (see template in Annex 4) draws the attention of investigators to the restrictive rules on processing of such special categories of personal data.

7/ Information to be given to data subjects

The information to be given to data subjects as referred to in art. 11 and art. 12 of Regulation (EC) 45/2001 are taken into account in the context of an administrative inquiry or disciplinary proceeding.

Firstly, the person being investigated is informed of the existence of the administrative inquiry or disciplinary proceeding by means of the Notification of Administrative Inquiry (see template in Annex 3). He/she shall also be informed on the closing of an inquiry and on the information regarding any hearings and their outcome.

Furthermore, as referred to in the annexes template Notification, the person subject to 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 as well as on possible restrictions to these rights.

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 receives a 'Notification of Administrative Inquiry' (see template in Annex 3) which states the rights of access and rectification, as follows: "The person being investigated shall have the right of access to any information relating to him/her processed in the context of the inquiry and the right to rectify any such data that are inaccurate or incomplete. The rights of access and rectification referred to may be restricted mainly in order to safeguard the protection of the rights and freedoms of other persons. The person being investigated in any case has the right to ensure completeness of the disciplinary file in question by adding his/her comments and by including in it any recourse or appeal decision. To exercise his/her rights, the person being investigated should contact the controller in charge of processing the data, which is the Head of EFSA Human Resources Unit. As a data subject, he/she also has the right of recourse to the European Data Protection Supervisor (EDPS)."

- All documentation will be made available to the subject, with the restriction of documentation that could be presented as a safeguard to 'protect the rights and freedoms of others', as in the case of whistleblowers, informants or witnesses.

Should these restrictions to the data subject's rights be applicable a note will be placed in the disciplinary file.

9/ Automated / Manual processing operation

- The data processing operation is mainly paper-based. The disciplinary file including all documentation shall be placed in a locked filing cabinet of the Human Resources Unit allowing access solely to authorised individuals
- 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 the relevant provisions in Regulation 45/2001.

10/ Storage media of data

Data are stored on paper in the disciplinary file , kept in a secure filing system under supervision of HR Unit

11/ Legal basis and lawfulness of the processing operation

Processing operation is covered by the mandate of EFSA:

- o Art. 86 of the Staff Regulations and Annex IX thereof ; Articles 49 to 50a and Article 119 of the CEOS ;
- o Decision of the Executive Director of 09 September 2009 on the implementation rules for the conduct of administrative inquiries and for disciplinary procedures ;
- o Decision of the Director of Administration of 16 December 2010 laying down administrative rules on file handling in the context of EFSA Administrative Inquiries and Disciplinary Proceedings

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

Head of HR Unit and duly authorized staff of the HR Unit, EFSA Executive Director, Director of Administration, Members of the Investigation Panel, Members of the Disciplinary Board, Data subject being investigated, Other EU Bodies: OLAF, the European Ombudsman, the EDPS, EU Civil Service Tribunal. External transfer to competent national court in Italy may be possible in case of an infringement of Italian national law. In such case the 'necessity test' for the external transfer will be established in accordance with article 8 of Regulation (EC) 45/2001

13/ retention policy of (categories of) personal data

The conservation period of disciplinary files at EFSA shall be:

- A maximum period of 20 years in case, following an administrative inquiry, a charge is brought against the staff member concerned
- In any case not longer than until the final decision has been deleted from the personal file ;
- A maximum period of 5 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 personal file.

In accordance with article 27 of Annex IX to the Staff Regulations, 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/her personal file of all reference to such measure. The Executive Director decides whether to grant this request.

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, 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,

In accordance with the Decision of the Executive Director (art. 11), the decisions on disciplinary matters taken or a summary of those shall be published once a year. The names of staff members or any other information which could identify them, shall be omitted.

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

N/A

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

AS FORESEEN IN:

Article 27.2.(a)

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

Article 27.2.(b)

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

Article 27.2.(c)

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

Article 27.2.(d)

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

Other (general concept in Article 27.1)

17/ Comments

Annexes / supporting documents to the notification:

1. Decision of the Executive Director of 09 September 2009 on the implementation rules for the conduct of administrative inquiries and for disciplinary procedures
2. Decision of the Director of Administration of 16 December 2010 laying down administrative rules on file handling in the context of EFSA Administrative Inquiries and Disciplinary Proceedings
3. Template Notification of Administrative Inquiry
4. Template Appointment as a member of an Investigation Panel for an Administrative Inquiry
5. DPO notification

PLACE AND DATE: Parma, 11/02/2011

DATA PROTECTION OFFICER: Claus Reunis

INSTITUTION OR BODY: European Food Safety Authority (EFSA)