

REGISTER NUMBER: 689

NOTIFICATION FOR PRIOR CHECKING

Date of submission: 07/06/2011

Case number: 2011-0558

Institution: EASA

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 address of the controller

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Function: Head of Personnel
Administrative Address: Ottoplatz, 1 D-50679 Köln, Germany

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

EASA Human resources department

3/ Name of the processing

Administrative inquiries and disciplinary procedures

4/ Purpose or purposes of the processing

The purpose of the data processing operation is to put together a file that enables the Executive Director in his role as Appointing Authority to determine whether a EASA staff member or a former staff member has failed to fulfil his/her obligations under the Staff Regulations and, where appropriate, impose a disciplinary penalty in accordance with the Staff Regulations.

5/ Description of the category or categories of data subjects

- Staff Members (Temporary and Contract Agents) and former EASA staff members

6/ Description of the data or categories of data

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

Data relating to suspected offences, offences, criminal convictions or security measures; Data being used to evaluate personal aspects of the data subject (ability, efficiency, conduct)

Other personal data of staff members who are subject of an administrative inquiry or a disciplinary proceeding could also be processed in the framework of the investigation depending on the individual case. The data that are collected can vary on a case by case basis depending on the issue which is being investigated.

7/ Information to be given to data subjects

- The ED/Head of Personnel informs the staff member concerned of the opening of the administrative inquiry and disciplinary procedure as such, in line with the Staff Regulations and CEOS, unless s/he considers that disclosing this information would hinder the inquiry.
- If following an administrative inquiry no charge is brought against an alleged staff member, the ED informs the staff member in writing.
- The Head of Personnel in his/her role as Data Controller informs the staff member concerned of the outcome of the inquiry, hands over the inquiry report and provides all documents directly linked to the allegations made, subject to the protection of personal data and of legitimate interest of third parties.
- Staff members concerned are informed about the hearing and its outcome.
- In case the Disciplinary Board is consulted the ED submits a report to the Disciplinary Board, which will also be communicated to the staff member concerned.
On receipt of the report the concerned staff member shall have the right to obtain his/her complete personal and disciplinary file and take copies of all documents relevant to the proceedings, including exonerating evidence.
- The Disciplinary Board transmits its opinion to the ED and the staff member concerned.
- If the ED decides to close the case without imposing any disciplinary measure, s/he shall inform the staff member concerned in writing without delay. In this case there shall be no traces of the decision in the personal file unless the staff member concerned requests so.

The data subject is also informed of his/her rights through the data protection notice (in attachment)

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

With reference to the specific rules of access to the files which characterize the disciplinary procedure, please see point 7 of the present notification. Moreover, the data subject's rights are granted in accordance with EASA Implementing Rules on data protection and with the information notice which is given to the data subject.

In particular, each data subject can access his/her personal data and rectify and complete them by contacting the Head of Personnel (in its position as Data Controller).

Information may on occasion be withheld from data subjects, where its disclosure would impede an investigation and as long as this condition continues to apply.

The right of access or rectification to personal data might be restricted to the data subject in accordance with Article 20(1) (a-e). Should a restriction to the right of access or rectification be imposed for one of the reasons foreseen by the law, the data subject shall have the right to have recourse to the European Data Protection Supervisor for indirect access, according to article 20(4).

9/ Automated / Manual processing operation

non automated processing. Data are collected and stored in paper files

10/ Storage media of data

11/ Legal basis and lawfulness of the processing operation

- As specified in Article 86 of the Staff Regulations "any failure by 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".
- Furthermore disciplinary rules, procedures and measures and the rules and procedures covering administrative investigations are laid down in Annex IX to the Staff Regulations.
- In the articles 49, 50, 50a and 119 of the Conditions of Employment of other Servants it is determined that the same regime should apply to temporary and contractual staff. Article 2(3) of Annex IX to the Staff Regulations specifies that "the institutions shall adopt implementing arrangements for this Article, in accordance with Article 110 of the Staff Regulations".
- General implementing provisions on the conduct of administrative inquiries and disciplinary procedures will be adopted by EASA (you can find here enclosed the Implementing Rules which are communicated to the EDPS for consultation in accordance to the provisions of Article 28.2 of Regulation (EC) 45/2001)

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

- The Executive Director in his role as Appointing Authority;
- The Head of Personnel and authorised staff of the HR Management & Development Section within the HR Department;
- The Legal Department (in case of need);
- The Staff members responsible for the investigation (investigators) - in case of an administrative inquiry;
- The Disciplinary Board members nominated if disciplinary proceedings before the Disciplinary Board are initiated;
- In rare cases National or Community judicial authorities/ and EU Ombudsman.

13/ retention policy of (categories of) personal data

In principle personal data on disciplinary cases shall be retained within the time limits indicated below so that the provisions relating to repeated misconduct (Article 4 (h) of Draft ED Decision) can be taken into account in any future disciplinary proceedings.

- a. 20 years from the date of the Executive Director's decision to impose a disciplinary measure following Article 9 (b) – (h) of Annex IX to the Staff Regulations;
- b. 5 years from the date of the Executive Director's decision to close a case without action after the inquiry or to issue a warning under Article 9 (a) of Annex IX to the Staff Regulations;
- c. 2 years for cases that did not lead to an inquiry or disciplinary sanction.

However, files are kept beyond the time limits above if they need to be consulted for the purposes of legal or administrative proceedings (e.g. claims for damages, requests by the Ombudsman, appeals to the Court of Justice) which are still pending when the time-limit expires.

In accordance with article 27 of Annex IX of the Staff Regulations, if the Executive Director decides to impose a disciplinary measure other than removal from post, this decision shall be kept in the personal file of the staff member concerned. After three years in the case of a written warning or a reprimand, after six years in the case of any other sanction, the staff member concerned may request the removal of all reference to such measure. The Executive Director shall decide whether to follow this request.

An inquiry file is normally created to contain all data collected by the investigators during an administrative inquiry and all data related to possible disciplinary proceedings.

These files are stored for a period which is established taking into account the time limit for appeal and the principle evoked in Article 4(1)(e) of Regulation 45/2001.

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

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,

Not applicable

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

Not applicable

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

AS FORESEEN IN:

Article 27.2.(a) **X**

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

Article 27.2.(b) **X**

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

PLACE AND DATE:

DATA PROTECTION OFFICER:

INSTITUTION OR BODY: