

(To be filled out in the EDPS' office)

REGISTER NUMBER: 970

(ONLY IN CASE OF PRIOR CHECKING BY EDPS: To be filled out in the EDPS' office)

NOTIFICATION FOR PRIOR CHECKING

DATE OF SUBMISSION: 21/03/2013

CASE NUMBER: 2013-0323

INSTITUTION: European Joint Undertaking for ITER and the Development of Fusion for Energy

LEGAL BASIS: ARTICLE 27-5 OF THE REGULATION CE N° 45/2001⁽¹⁾

INFORMATION TO BE GIVEN²

1/ NAME AND ADDRESS OF THE CONTROLLER

The European Joint Undertaking for ITER and the Development of Fusion for Energy
C./ Josep Pla, n° 2,
Torres Diagonal Litoral,
Edificio B3,
08019 Barcelona, Spain

Controller: Hans Jahreiss, Head of Administration of Fusion for Energy

2/ ORGANISATIONAL PARTS OF THE INSTITUTION OR BODY ENTRUSTED WITH THE PROCESSING OF PERSONAL DATA

Administration Department, Human Resources Unit

3/ NAME OF THE PROCESSING

Processing of leave requests (including leave on personal ground (unpaid leave for agents under the Conditions of employment of Other Servants), sick leave, annual leave and in general all special leave as well as parental and family leave) and part time requests.

¹ OJ L 8, 12.01.2001.

² **Please attach all necessary backup documents**

This notification does not cover the processing of health data (related to sickness or accident) by the medical services (*as already covered by the 4 health notifications 2011, 1088-1091*)

4/ PURPOSE OR PURPOSES OF THE PROCESSING

To establish and manage staff leave entitlements as well as to process leave and part-time requests introduced by staff members

5/ DESCRIPTION OF THE CATEGORY OR CATEGORIES OF DATA SUBJECTS

The subject shall be Fusion for Energy staff members or their relatives in case the latter give ground for leave (for instance requests for unpaid/special/parental/family leave or part-time). Staff members are free to give their data and provide the required supporting documents on a voluntary basis, although failure to do so may exclude them automatically from an entitlement.

6/ DESCRIPTION OF THE DATA OR CATEGORIES OF DATA (*including, if applicable, special categories of data (Article 10) and/or origin of data*).

- Identification details – information concerning the staff member and needed in order to establish the leave entitlement (surname, first name, department, personal number, professional email address, distance in kilometres from the place of origin, date of birth, contract type, headquarter, working regime, category, data visibility (access rights to data in Leama))
- Information concerning the leave request: dates of leave, contact details. For leave on personal ground, the request form also contains information concerning potential outside activity. If the staff member intends to work in another organisation, s/he shall provide the contact details of the organisation, the nature of the work that s/he will undertake, his/her position and status within the organisation in question
- Information concerning the part-time request: dates of part-time, contact details
- Information and documents provided by the staff member to support unpaid/special/parental/family leave requests and part time requests as defined in the rules into force. The staff member will specify the rationale motivating the leave on personal ground/special leave/parental/family leave/part time request and attach the required supporting documents. If the supporting documents contain health data, the staff member should transmit them to the Medical Service, notifying the leave manager that he/she has done so and providing the basic administrative information contained in the certificate (such as his/her name and that of the sick person and the dates to be covered by the special leave).
- Electronic approval or refusal of the request for annual leave and special leave.

- Paper forms for the parental/family leave and part-time requests. The number of days taken on the basis of the leave on personal ground/parental/family leave is then introduced in Leama by the Leave Manager.

7/ INFORMATION TO BE GIVEN TO DATA SUBJECTS

A specific Privacy Notice has been published in the F4E intranet, providing staff members with the information required under Articles 11 and 12 of the Regulation (EC) 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies on the free movement of such data.

See attached in Annex I.

8/ PROCEDURES TO GRANT RIGHTS OF DATA SUBJECTS

(Rights of access, to rectify, to block, to erase, to object)

Right of access: according to Article 13 of Regulation 45/2001, the data subjects have the right of access to their data being processed by contacting the Fusion for Energy Data Controller.

Right of rectification: according to Article 14 of Regulation 45/2001, the data subjects have also a right to rectify their data that are inaccurate or incomplete by contacting the Data Controller at any time.

Right of blocking: according to Article 15 of Regulation 45/2001, the data subjects have also the right to obtain from Data Controller blocking of their data when:

- They contest the accuracy of the data;
- The controller no longer needs them but they need to be maintained for purposes of proof;
- The processing is unlawful and the data subject requests blocking instead of erasure.

Personal data blocked shall only be processed for the purpose of proof (with the consent of the data subject) or for the protection of the rights of a third party.

Right of erasure: according to Article 16 of Regulation 45/2001, the data subjects can request the cancellation of their personal data if they consider that they are subject to an unlawful processing.

Right to object: according to Article 18 of Regulation 45/2001 in the data subjects can object the processing of their personal data unless the processing is needed for the purposes of Article 5b) and d) of Regulation 45/2001:

- On legitimate grounds relating to their particular situation
- Before their personal data are disclosed to third parties.

Article 20(1)(c) of Regulation 45/2001 states that the data controller may restrict access to the information/documents to safeguard:

- the prevention, investigation, detection and prosecution of criminal offences
- any important financial or economic interest of the Member States
- the protection of the data subject or the rights of freedoms of others
- the national security, public security or defence of the Member States
- the monitoring, inspection or regulatory task connected with the exercise of official authority.

Common steps for the exercise of any of the above mentioned rights: Any request from a data subject concerning the rights above described should be addressed to the Controller through the following contact e-mail addresses:

Resources-Controller@f4e.europa.eu

DataProtectionOfficer@f4e.europa.eu

The Controller shall provide an answer to the data subject concerning his/her request on the exercise of his/her rights, as defined above, within 10 working days. Any contestation by the data subject to the Controller's reply shall be submitted within 10 working days of the response received and the Controller shall have another 10 working days to provide a replica revising his previous decision or confirming it.

The data subject may put in place the procedure established in article 90 of the Staff Regulations to contest any action of the data controller related to his/her rights.

All data subjects have also right of recourse at any time to the European Data Protection Supervisor: EDPS@edps.europa.eu. The EDPS receives complaints from EU staff members as well as from other people who feel that their personal data have been mishandled by a European institution or body. If a complaint is admissible, the EDPS usually carries out an inquiry. The findings are communicated to the complainant, and necessary measures are adopted.

In case of dispute, the competent forum to lodge an appeal is that of the Civil Service Tribunal, Rue du Fort Niedergrünwald, L-2925 Luxembourg.

9/ AUTOMATED / MANUAL PROCESSING OPERATION

Annual leave requests are made through Leama and processed automatically.

Special and sick leave requests are made through Leama and processed automatically. Supporting documents can also be submitted by post to the relevant appointing authority or, where appropriate, to the Medical Service. In that case, they will be processed manually. Depending on the nature of the supporting document, the data subject can block out irrelevant or superfluous personal data as long as enough details remain for the appointing authority to establish the rights. If a supporting document contains medical information, the data subject must submit it to the Medical Service and inform the appointing authority.

Family leave requests are initiated manually through a form with supporting documents and sent to the relevant appointing authority, or where appropriate, to the Medical Service (see rules into force). Depending on the nature of the supporting document, the data subject can block out irrelevant or superfluous personal data as long as enough details remain for the appointing authority to establish

the rights. If a supporting document contains medical information the data subject must submit it to the Medical Service and inform the appointing authority.

Parental leave requests are initiated manually through a form with supporting documents and sent to the relevant appointing authority, or where appropriate, to the Medical Service (see rules into force). Depending on the nature of the supporting document, the data subject can block out irrelevant or superfluous personal data as long as enough details remain for the appointing authority to establish the rights. If a supporting document contains medical information the data subject must submit it to the Medical Service and inform the appointing authority.

Leave on personal ground requests are initiated manually through a form with supporting documents and sent to the relevant appointing authority, or where appropriate, to the Medical Service (see rules into force). Depending on the nature of the supporting document, the data subject can block out irrelevant or superfluous personal data as long as enough details remain for the appointing authority to establish the rights. If a supporting document contains medical information the data subject must submit it to the Medical Service and inform the appointing authority.

Part time requests are initiated manually through a form with supporting documents and sent to the relevant appointing authority, or where appropriate, to the Medical Service (see rules into force). Depending on the nature of the supporting document, the data subject can block out irrelevant or superfluous personal data as long as enough details remain for the appointing authority to establish the rights. If a supporting document contains medical information, the data subject must submit it to the Medical Service and inform the appointing authority.

10/ STORAGE MEDIA OF DATA

Electronic files managed in a specific electronic tool called Leama

Electronic files for annual leave requests

Paper files for leave on personal ground/family/parental leave and part time

Mixed for special and sick leave requests: if staff attached the supporting documents in Leama when introducing their requests, no paper file will be created. If staff sent in paper the supporting documents, then a paper file will be created to archive the document.

11/ LEGAL BASIS AND LAWFULNESS OF THE PROCESSING OPERATION

(i) Legal basis (i.e. Staff Regulations)

Council Decision of 27 March 2007 establishing the European Joint Undertaking for ITER and the Development of Fusion Energy and conferring advantages upon it - 2007/198/Euratom in particular Article 6 thereof;

The Statutes annexed to the Council Decision of 27 March 2007 establishing the European Joint Undertaking for ITER and the Development of Fusion Energy and conferring advantages upon it - 2007/198/Euratom in particular Article 10 thereof;

Staff Regulations of Officials (SR) and the Conditions of Employment of Other Servants of the European Communities (CEOS) in particular Article 26 and 60 (SR), Chapter 1 and 2 of Title IV (SR), Annex IVa and V and Article 110 (SR) as well as Articles 11, 16 to 18, 58, 81 and 91 (CEOS);

Commission Decision introducing implementing provisions on leave C (2010) 7495 final applied by analogy by Fusion for Energy through a Decision of the Director of 08.05.2008 F4E/2008/O/RESO/0624

Decision of the Governing Board of Fusion for Energy F4E(09)-GBIO-13 applying by analogy the Commission decision concerning leave on personal grounds and unpaid leave

Decision of the Governing Board of Fusion for Energy F4E(11)-GB26-10.7a applying by analogy the Commission decisions on parental leave and on family leave

Decision of the Governing Board of Fusion for Energy F4E (11)-GB26-10.7c on part time work

(ii) Lawfulness Personal data may be processed only if:

Processing is necessary for the performance of F4E tasks on the basis of the F4E founding instrument or other legal instrument adopted on the basis thereof or in the legitimate exercise of official authority vested in F4E or in a third party to whom the data are disclosed (Regulation (EC) 45/2001, Article 5(a)), or

Processing is necessary for compliance with a legal obligation to which the controller is subject (Regulation (EC) 45/2001, Article 5(b)), or

Processing is necessary for the performance of a contract to which the data subject is party or in order to take steps at the request of the data subject prior to entering into a contract (Regulation 45/2001, Article 5(c)), or

The data subject has unambiguously given his or her consent (Regulation 45/2001, Article 5(d)), or

Processing is necessary in order to protect the vital interests of the data subject (Regulation 45/2001, Article 5(e)).

12/ THE RECIPIENTS OR CATEGORIES OF RECIPIENT TO WHOM THE DATA MIGHT BE DISCLOSED

Annual leave requests are transmitted automatically to the hierarchical superior for approval. The hierarchical superior can only view the request currently under process (no access to former ones or to the staff member data requesting the leave), as well as the supporting documents (when applying)

Appointing Authority for leave on personal ground, special, parental and family leave requests as well as part time: access to the request and to the supporting documents (except documents containing medical information)

Medical service (for documents containing administrative medical information)

Human Resources Leave Manager

Head of Human Resources unit, responsible person(s) managing Leama

Fusion for Energy responsible Legal Advisor of Directors office: in case of a dispute

Internal Auditor (for audit purposes)

Court of Auditors (for audit purposes)

European Ombudsman (upon justified request)

Court of Justice of the European Union (upon justified request)
OLAF (upon justified request)

13/ RETENTION POLICY OF (CATEGORIES OF) PERSONAL DATA

The following **specific retention periods apply** to on-line data and hard-copies/supporting documents for:

Sick leave: 3 years for the administrative data relating to the sick leave. A longer conservation period may apply in order to cover periods when a dispute or an appeal is underway.

Annual leave: 3 years. A longer conservation period may apply in order to cover periods when a dispute or an appeal is underway.

Other leave: for leave on personal ground (unpaid leave), special leave, parental or family leave and part-time, data are kept at least until the termination of employment and beyond in case the right of the data subject still persists. In case of an on-going appeal or dispute, on-line data and hard copies can be kept until the end of that procedure.

The **retention periods are implemented** in the following way:

For on-line data :

The LeaMa application has a “Delete” function that shall be manually triggered by the LeaMa manager on a periodic basis. Upon launching this feature, the application will delete all data for which retention period has expired on that date.

In case of need for preserving data during complaints, the LeaMa application has an “Export” function. By selecting the “Export” function the LeaMa manager will be asked to specify the member of staff for whom data is to be exported and will export the requested data.

For hard-copies/supporting documents :

The data for which retention period has expired will be destroyed manually, except in case there is a dispute or appeal underway. In that case, the data will be kept in the file.

13 A TIME LIMIT TO BLOCK/ERASE ON JUSTIFIED LEGITIMATE REQUEST FROM THE DATA SUBJECTS

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

The Controller shall execute any request for blocking or erasure as soon as possible and in any case not later than within 10 working days from the day the data subject’s request reached F4E. He/she will notify this circumstance to the data subject by the same means of communications that the data subject chose to address him.

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.

N/A

15/ PROPOSED TRANSFERS OF DATA TO THIRD COUNTRIES OR INTERNATIONAL ORGANISATIONS

N/A

16/ THE PROCESSING OPERATION IS LIKELY TO PRESENT A SPECIFIC RISK TO THE RIGHTS AND FREEDOMS OF THE DATA SUBJECTS WHICH JUSTIFIES PRIOR CHECKING BY THE EDPS:

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, including his or her ability, efficiency and conduct;

↑ 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,

Staff members are free to give their data and provide the required supporting documents on a voluntary basis, although failure to do so may exclude them automatically from the leave entitlement. In addition, the processing enables the management of the leave entitlement and for instance of any unjustified absence, which may lead to reduction in leave entitlement and/or withholding of pay.

↑ Other (general concept in Article 27.1)

PLACE AND DATE: BARCELONA,

DATA PROTECTION OFFICER: ANGELA BARDENHEWER

INSTITUTION OR BODY: FUSION FOR ENERGY

ANNEXES:

ANNEX I – SPECIFIC PRIVACY NOTICE

ANNEX II – DECLARATION OF CONFIDENTIALITY