

*(To be filled out in the EDPS' office)*  
**REGISTER NUMBER: 1159**

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**NOTIFICATION FOR PRIOR CHECKING**

**DATE OF SUBMISSION: 18/09/2013**

**CASE NUMBER: 2013-1022**

**INSTITUTION: REA**

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

**INFORMATION TO BE GIVEN<sup>2</sup>**

1/ NAME AND ADDRESS OF THE CONTROLLER

Research Executive Agency (REA)  
COV2  
B-1049 BRUSSELS  
BELGIUM

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

For organisational reasons, the role of the data controller is exercised by Mr Gilbert GASCARD (REA Director).

GASCARD Gilbert  
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COV2 18/132  
Tel: 50017

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<sup>1</sup> OJ L 8, 12.01.2001.

<sup>2</sup> **Please attach all necessary backup documents**

3/ NAME OF THE PROCESSING

- A. Administrative inquiries under Annex IX of the Staff Regulations
- B. Inquiries following a request under Article 24 of the Staff Regulations
- C. Inquiries following a request under Article 73 of the Staff Regulations
- D. Inquiries following a complaint under Article 90 of the Staff Regulations
- E. Disciplinary proceedings

4/ PURPOSE OR PURPOSES OF THE PROCESSING

The human resources sector (hereinafter referred to as "REA HR") of the REA defines, coordinates and ensures implementation of human resources policies (covering the implementation of the procedures for general administrative inquiries and disciplinary issues) within the Agency, on the basis of the relevant provisions of the Staff Regulations and the Conditions of Employment of Other Servants of the European Communities.

The processing of personal data in the framework of general administrative inquiries and disciplinary proceedings is based on a task to be performed in the public interest as provided for in the Staff Regulations and is considered as necessary to comply with the Staff Regulations.

A. Administrative inquiries and disciplinary proceedings under Annex IX of the Staff Regulations

Information will be gathered to allow the AECC of the Agency to determine if a staff member has failed to comply with his/her obligations under the Staff Regulations and to proceed to disciplinary measures if necessary. In that frame, the processing of personal data is considered as lawful.

The aim of administrative inquiries under Annex IX of the Staff Regulations is to explore a situation likely to implicate data subject's personal responsibility through disciplinary measures.

In this context the REA has concluded a Service Level Agreement (SLA) with DG HR/IDOC. ("Service Level Agreement concerning the collaboration between the Directorate-General for Human Resources and Security of the European Commission (DG HR) and the Research Executive Agency (REA)" – Annex II).

Provisions of Appendix 4 of the SLA fully describe the services provided by DG HR/IDOC.

B. Inquiries following a request under Article 24 of the Staff Regulations

Information will be gathered to allow the AECC of the Agency to determine if a staff member is entitled to receive assistance from the Agency according to the provisions of Article 24 of the Staff Regulations applicable to contract staff and temporary staff.

The aim of inquiry (under Article 24 of the Staff Regulations) is to establish the facts on the basis of which the Agency will be able to make an informed decision on a request for assistance under Article 24 of the Staff Regulations. The inquiry is not intended to determine any individual responsibility. In this context, the processing of personal data is therefore considered as lawful.

Inquiries held following a request under Article 24 of the Staff Regulations will be conducted by the Agency.

C. Inquiries following a request under Article 73 of the Staff Regulations

Information will be gathered to allow the AECC of the Agency to determine if a staff member is entitled to benefit from the insurance against the risk of accident and/or occupational disease according to the provisions of the common rules on the insurance of officials of the European Communities against the risk of accident and of occupational disease applicable to contract staff and temporary staff ("Common rules on the insurance of officials of the European Communities against the risk of accident and occupational disease" - Annex III).

The aim of the inquiry is to obtain all the information necessary to determine for example the nature of a disease, whether it has resulted from the insured party's occupation and also the circumstances in which it has arisen. Such inquiry may also be held in the case of an insured party who contracts a disease or sustains injuries by exposure, in the performance of his/her duties, to noxious substances or to exceptional factors causing disease. The inquiry is not intended to determine any individual responsibility.

Inquiries held following a request under Article 73 of the Staff Regulations will be conducted by the Agency.

D. Inquiries following a complaint under Article 90 of the Staff Regulations

Information will be gathered to allow the AECC of the Agency to determine if a decision taken by the AECC of the Agency against a staff member is legitimate pursuant to Article 90 of the Staff Regulations applicable to contract staff and temporary staff.

The aim of an Article 90 of the Staff Regulations inquiry is to establish the facts on the basis of which the Agency will be able to make an informed decision on a complaint under Article 90 of the Staff Regulations. The inquiry is not intended to determine any individual responsibility.

Inquiries held following a complaint under Article 90 of the Staff Regulations will be conducted by the Agency.

E. Disciplinary proceedings

Disciplinary proceedings may be launched by the AECC of the Agency against the data subject concerned on the basis of the investigation report to determine if and which disciplinary penalty should be imposed or not on the data subject.

In case of disciplinary proceedings, the processing of personal data will intend:

- By DG HR/IDOC: to provide assistance the AECC of the Agency with procedural aspects according to the SLA concluded between the Agency and DG HR/IDOC.
- By the Agency Disciplinary Board: to issue recommendations to the AECC of the Agency on the appropriate disciplinary penalty and aid the AECC of the Agency to determine penalties based on these recommendations.
- By the AECC of the Agency: to determine, following the recommendations of the Agency Disciplinary Board, which disciplinary penalty if any, he/she will impose to the data subject concerned.

5/ DESCRIPTION OF THE CATEGORY OR CATEGORIES OF DATA SUBJECTS

The data subjects may be permanent staff, temporary agents, contractual agents, national experts and trainees who may be subject to an investigation carried out by these bodies, but also any other person (e.g. victim, witness, whistle-blower) whose data may be processed in the frame of an administrative investigation or disciplinary proceeding.

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

Depending of the type of administrative inquiries, certain special categories of data might be processed by the Agency if an exception provided in Article 10 (2), (4) or (5) of Regulation (EC) No 45/2001, hereinafter referred to as the "Regulation", applies (including IDOC for administrative inquiries under Annex IX of the Staff Regulations and disciplinary proceedings and the Agency Disciplinary Board in case of disciplinary proceedings involving the Agency Disciplinary Board). A detailed table regrouping these categories of data is annexed to the notification ("Description of the data or categories of data" - Annex IV). As far as special categories of data are concerned the AECC (data controller) will ensure that the responsible investigators or members of the Disciplinary Board are made aware of the restrictive rules that apply to the processing of these special categories of data.

- Traffic data

In case the AECC considers necessary to process data that relate to Internet connections, the e-mail or the telephone use within the context of an administrative inquiry or disciplinary proceeding, it will do so with due observance of the provisions of the articles 20 and 37 of the Regulation. The AECC may decide, on a case by case basis, to restrict the application of Article 37 (1) of the Regulation in order to safeguard the prevention, investigation, detection and prosecution of criminal offences or to protect the rights and freedoms of others. This exemption may apply, on a case by case basis, only if the processing of the traffic data is necessary in the context of the conduct of an administrative inquiry or disciplinary proceeding.

In cases traffic data are processed for telecommunications budget and traffic management purposes including the verification of authorised use of telecommunications system data may be kept for a period longer than six months only in order to establish, exercise or defend a right in a legal claim pending before the court.

- Confidentiality of communications

The AECC is aware of his/her obligation to ensure the confidentiality of communications (telecommunications networks or terminal equipment) as provided for in Article 36 of the Regulation. In case the AECC considers that it is necessary to gain access to electronic communications in the course of an administrative inquiry or disciplinary proceeding (and only on a case by case basis), the four criteria defined in the respective EDPS guidelines, namely lawfulness, necessity, proportionality and choice of the less intrusive means of investigation will be observed. It might also be possible that the Agency (including IDOC for administrative inquiries under Annex IX of the Staff Regulations and disciplinary proceedings and the Agency's Disciplinary Board in case of disciplinary proceedings involving the Agency Disciplinary Board) must process data that cannot be identified at the stage of the prior checking and that can vary according to the purpose of the case being dealt with. The Agency (including IDOC for administrative inquiries under Annex IX of the SR and disciplinary proceedings and the Agency Disciplinary Board in case of disciplinary proceedings involving the Agency Disciplinary Board) ensures that only necessary and proportionate data will be processed in conformity with article 4(1) c of Regulation (EC) No 45/2001 and article 15 of Annex IX of the Staff Regulations.

7/ INFORMATION TO BE GIVEN TO DATA SUBJECTS

In order to guarantee fair processing and transparency in respect of the data subject and having regard to the specific circumstances of the processing operation, the following information will be available (under the local Intranet) to data subjects:

- A Specific Privacy Statement (SPS) including information on the elements provided for in article 11 of Regulation (EC) No 45/2001;
- The REA Steering Committee decision adopting Commission Decision C(2004)1588 of 28/04/2004 on the conduct of administrative inquiries and disciplinary proceedings;
- The Memorandum of Understanding ("MoU") between the executive agencies setting up a Disciplinary Board within each executive agency;
- The REA Steering Committee decision adopting by analogy the IDOC's manual;
- The IDOC's manual;
- The common rules on insurance against the risk of accident and occupational disease;
- The service level agreement ("SLA") between the REA and DG HR;
- The appointment of the REA Disciplinary Board;
- The procedural rules of the REA Disciplinary Board;
- All relevant legal bases in relation with administrative inquiries procedures and disciplinary proceedings.

For each of the following operations, the Specific Privacy Statement (SPS) as well as the following information will be provided to the data subject

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A. Administrative inquiries

- Administrative inquiries under Annex IX of the Staff Regulations

As soon as a administrative inquiry suggests that a staff member is personally involved in an affair, the AECC of the Agency will inform him/her by written notification provided that the information does not hinder the inquiry. Otherwise, the staff member will be informed as soon as possible thereafter. The Specific Privacy Statement will be included in the information given to the data subject.

The AECC of the Agency will inform the data subject personally concerned when the investigation ends and will communicate to him/her the conclusions of the investigation report and, on request and subject to the legitimate interests of third parties, all documents directly related to the allegations made against him/her.

If a supplementary disciplinary administrative inquiry has to be launched, the same rules above will apply.

- Inquiries following a request under Article 24 of the Staff Regulations

Whenever such inquiry is opened, the data subject will be informed by written notification.

When such inquiry involves alleged harassment, the persons questioned during the hearings will also be informed of the outcome of the inquiry.

- Inquiries following a request under Article 73 of the Staff Regulations

Whenever such inquiry is opened, the data subject will be informed by written notification.

The Agency will notify the insured party or those entitles under him/her of the draft decision and of the findings of the doctor appointed by the Agency.

- Inquiries following a complaint under Article 90 of the Staff Regulations  
Whenever such inquiry is opened, the data subject will be informed by written notification.  
If any, the persons questioned during the hearings will also be informed of the outcome of the inquiry.

B. The Mandate (administrative inquiries by IDOC)

The IDOC (mandatee) is responsible for informing the member(s) of the staff concerned that an administrative inquiry has been opened, provided that information does not hinder the inquiry.

C. Hearings during administrative inquiries

Data subject(s) asked to attend a hearing will be notified in writing by the investigation team. Sometimes, it may be done at the same time as the notification of the opening of the administrative inquiries referred in point A.

D. Closure of administrative inquiries

Once the investigation report has been submitted to the AECC of the Agency, the data subject personally concerned will be informed by the AECC of the Agency that the inquiry has been completed and, unless the case is closed without further action, a copy of the conclusions of the report will be sent to him/her.

If the case is closed without further action, the AECC of the Agency will promptly inform in writing the data subject personally concerned.

In case of admonition issued by the superior of the data subject personally concerned, the latter will be informed in accordance with Article 26 of the Staff Regulations.

E. Pre-disciplinary proceeding (Article 3 of Annex IX of the Staff Regulations) – If applicable

The data subject will be informed of the opening of a pre-disciplinary proceeding and will be notified of all the evidence in his/her file.

After the conduct of a hearing, the AECC of the Agency may decide to:

- Close the case

The data subject will be accordingly informed in writing by the AECC of the Agency.

- Issue a warning

The AECC of the Agency will address a warning to the data subject personally concerned.

- To initiate disciplinary proceedings before or not before the Agency Disciplinary Board.

The AECC of the Agency will notify the data subject personally concerned of accusations against him/her and the choice of procedure that will be followed (referral or not to the Agency Disciplinary Board)

F. Disciplinary proceedings

- With referral to the Agency Disciplinary Board

The report submitted to the Agency Disciplinary Board will be also communicated to the data subject personally concerned.

The Agency Disciplinary Board opinion will be addressed to the data subject personally concerned.

The same rule applies in case a second opinion is required from the Board.

The decision taken by the AECC of the Agency will be communicated in writing to the data subject personally concerned and will state the grounds on which it is based.

If the AECC of the Agency decides to close the case without imposing any disciplinary penalty, it will inform the data subject personally concerned in writing without delay.  
An original copy of the decision signed by the AECC of the Agency will be given to the data subject personally concerned. An acknowledgment of receipt of the decision will have to be signed by the data subject personally concerned.

- Without referral to the Agency Disciplinary Board

The decision taken by the AECC of the Agency will be communicated in writing to the data subject personally concerned and will state the grounds on which it is based.  
An original copy of the decision signed by the AECC of the Agency will be given to the data subject personally concerned. An acknowledgment of receipt of the decision will have to be signed by the data subject personally concerned.

## 8/ PROCEDURES TO GRANT RIGHTS OF DATA SUBJECTS

According to Article 13 of the Regulation, "the data subject shall have the right to obtain without constraint from the controller, communication in an intelligible form of the data undergoing processing and of any available information as to their source" (paragraph c). In addition, Article 14 of the Regulation provides the data subject with a "right to obtain from the controller the rectification of inaccurate or incomplete personal data". These rights may be restricted, on a case-by-case basis, pursuant to Article 20(1) (c) of the Regulation.

To exercise his/her right of rectification and its right of access the data subject will have to contact the controller by sending an email to the following functional mailbox: REA-DIRECTOR-SECRETARIAT@ec.europa.eu.

For each processing operation, the data subject shall have the following right of access and/or right of rectification of their personal data:

### A. Administrative inquiries

- Administrative inquiry under Annex IX of the Staff Regulations

The final report issued by the investigation team is not meant to be consulted or commented upon by the data subject concerned.

The data subject personally concerned will be given the right to comment on facts concerning him/her before that the investigation team proceeds to any drawn conclusions referring to him/her by name including whenever the "Financial Irregularities Panel" finds that the data subject personally concerned has committed irregularity. The conclusions of the report issued by the investigation team will make reference to any comments made by the data subject personally concerned.

This consultation phase will apply only to the part of the conclusions containing all the facts relating to the data subject under investigation.

In practice, the data subject personally concerned will be sent a summary of the facts relating to him/her and will be allowed 10 working days to agree with the summary. This period may be extended within reason if the data subject personally concerned is employed or lives abroad.

In sensitive cases (e.g. requiring the use of investigative procedures falling within the remit of a national judicial authority), compliance with the obligation to invite the data subject personally concerned to comment, may, in agreement with the AECC of the Agency, be deferred.

In such cases, no disciplinary proceedings will be opened before the data subject personally concerned has been given a chance to comment.

Starting from the day after the data subject personally concerned exercises his/her right of access to the facts concerning him/her, the data subject personally concerned will have a further period of 10 working days within which to make any comments.

Note: If several data subjects exercise their right of access to the facts concerning them and one of them makes comments or observations, substantiated if necessary by supporting documents, disclosing new information concerning one or more of the other persons, those data subjects will be offered the possibility of another consultation in relation to the new information.

The AECC of the Agency will inform the data subject personally concerned when the investigation ends and will communicate the conclusions of the investigation report and, on request and subject to the legitimate interests of third parties, all documents directly related to the allegations made.

If a supplementary administrative inquiry has to be launched, the same rules above will apply.

- Inquiry following a request under Article 24 of the Staff Regulations

The final report issued by the investigation team is not meant to be consulted or commented upon by the data subject concerned.

However, the originator of the request will be given the opportunity to ask the summary of the report. As the requester will not be given access to the inquiry report, this summary will be his/her only means of accessing the outcome of the inquiry.

- Inquiry following a request under Article 73 of the Staff Regulations

The final report issued by the investigation team is not meant to be consulted or commented upon by the data subject concerned.

Data subjects making a request under Article 73 of the Staff Regulations may have access to the inquiry report only through the procedure provided for in Article 20 of the common rules on insurance against the risk of accident and occupational disease:

- The insured party or those entitled will be given the opportunity to request that the full medical report is communicated to them or to a doctor chosen by them.
- Within a period of 60 days, the insured party or those entitled will be given the opportunity to request that the Medical Committee provided for in Article 22 of the common rules on insurance against the risk of accident and occupational disease, delivers its opinion.

In cases where the requesting data subject cites harassment, a summary of the inquiry report will be forwarded to him/her as necessary. The summary report will be strictly confined to the facts.

- Inquiry following a complaint under Article 90 of the Staff Regulations

The final report issued by the investigation team is not meant to be consulted or commented upon by the data subject concerned.

However, the originator of the complaint will be given the opportunity to ask the summary of the report. As the requester will not be given access to the inquiry report, this summary will be his/her only means of accessing the outcome of the inquiry.

If the Financial Irregularities Panel (PIF) is consulted, opinions of the PIF will be disclosed to the data subject directly concerned.

## B. Hearings during administrative inquiries

The language of the hearings will be mentioned in the notification and will be determined in a way so as to ensure the data subject concerned, effective and ready access to administrative acts that concern him/her individually.

A copy of the record of the hearing will be sent to all those present at the hearing.

## C. End of administrative inquiries

Once the AECC of the Agency has forwarded a copy of the conclusions of the report to the data subject personally concerned, upon request they will have access to all documents directly linked to the allegations made, subject to the protection of the legitimate interests of third parties.



Where several different data subjects are concerned by the administrative inquiry, their right of access will not cover the conclusions in their entirety but only the part where facts are reported and that relate to each of them individually.

In the event of closing the case without further action, the data subject personally concerned may ask the AECC of the Agency that the decision is inserted in his/her personal file.

#### D. Pre-disciplinary proceeding (Article 3 of Annex IX of the Staff Regulations) – If applicable

Prior to the possible initiation of disciplinary proceedings, the data subject personally concerned will have the right to be apprised of all evidence in the files and to be heard by the AECC of the Agency. In the case of a hearing, the record of the hearing of the data subject personally concerned will be submitted to him/her for signature. He/she will also be given the right to have, upon request, a copy of the records of the hearings of third parties provided that they constitute evidence for or against. After the above mentioned phase, the AECC of the Agency may decide to:

- Close the case
- Issue a warning

The warning will be entered in the data subject's personal file. He/she will be given the right to request the withdrawal of the warning from his/her personal file, 18 months after its adoption.

- Initiate disciplinary proceedings involving or not the Agency Disciplinary Board.

#### E. Disciplinary proceedings

- With referral to the Agency Disciplinary Board

The report submitted to the Agency Disciplinary Board will be communicated to the data subject personally concerned.

Upon receipt of the report, the data subject personally concerned will be given the right to obtain his/her complete personal disciplinary file and take copies of all documents relevant to the proceedings, including exonerating evidence.

In case the appointing authority decides to close the case without imposing any disciplinary penalty, the data subject personally concerned will be given the opportunity to request that the decision taken by the AECC of the Agency is inserted in his/her personal file. S/He will also be given the right to request that the damage suffered should be made good through suitable publicity for the decision of the AECC of the Agency.

Both, the decision and the acknowledgment of receipt will be inserted in the data subject's personal file.

The data subject personally concerned will be reminded of his/her right to request the deletion from his/her personal file of any reference to a penalty measure in order that reference to it is not an obstacle to his/her future career after:

- 3 years for written warnings/reprimand;
- 6 years for any penalty other than removal from the post.

However the AECC may decide whether to grant this request.

Deletion of the penalty from the personal file will be without prejudice to the application of Article 10 (h) and (i) of Annex IX of the Staff Regulations in the event of new disciplinary proceedings against the same data subject.

The timeframe for deletion will begin from the date the decision imposing the penalty was adopted.

- Without referral to the Agency Disciplinary Board

The same rules referred in the afore-mentioned section will apply with the exception of the rules specific to the procedure that involves the Agency Disciplinary Board.

9/ AUTOMATED / MANUAL PROCESSING OPERATION

A. Administrative inquiry under Annex IX of the Staff Regulations

- Opening of an administrative inquiry

Once the Agency is informed of a situation with a possible disciplinary dimension, it forwards the available information to DG HR/IDOC for an initial evaluation that will be issued by an initial report and recommendations to the AECC of the Agency.

At the end of the evaluation stage, DG HR/IDOC will issue an initial report including a recommendation to the AECC of the Agency indicating either:

- i. Not to follow-up
- ii. To refer the case to the European Anti-Fraud Office (hereafter "OLAF")
- iii. To open an administrative inquiry,
- iv. To directly organise a preliminary hearing (Article 3 of Annex IX of the Staff Regulations).

Once the AECC of the Agency decides to open a administrative inquiry and provides the requisite mandate, the AECC of the Agency will consult OLAF to confirm if they are not undertaking – and do not intent to undertake - a administrative inquiry for the same purpose. Personal data will therefore be disclosed to OLAF.

OLAF will generally be requested to reply within 15 days as of the day following receipt of the request.

If OLAF has already undertaken a disciplinary administrative inquiry for the same purpose, the procedure for opening the administrative inquiry will be abandoned by the Agency.

If the disciplinary administrative inquiry is opened, the AECC of the Agency will take the necessary measures to inform the person(s) concerned as soon as appropriate, and, if relevant, the Human Resources Unit.

- Mandate (Appointment of the Investigation Team)

If an administrative inquiry has to be opened, the AECC of the Agency will issue a mandate (appointment of an investigation team) which will be the legal basis for the administrative inquiry and which will define its scope.

According to the SLA concluded between the Agency and DG HR/IDOC, the investigation team will generally be composed of 2 case AD levels handlers, 1 from DG HR/IDOC and 1 from the Agency as well as 1 assistant from the Agency. In addition to these mandates and depending on the complexity or scale of the case, the AECC of the Agency will have the possibility to appoint one or more members to form part of the investigation team.

This team will report to DG HR/IDOC management for quality and consistency control.

- Works of the Mandate (Investigation Team)

The investigation team first objectively and thoroughly examines the facts, the relevant circumstances and applicable legal rules including the data protection legislation. If a member of the investigation team discovers that circumstances might hinder the inquiry, compromise its objectivity or be interpreted as so doing, or give rise to a conflict of interests s/he will have to inform the AECC of the Agency as soon as possible.

If, in the course of the inquiry, the investigation team is apprised of irregularities which do not come within the scope of the mandate issued, depending on the case in question, it will have to request a mandate to the AECC of the Agency for an additional inquiry or ask him/her for a separate inquiry to be open.

If during the inquiry, the investigation team considers that the case is likely to have a more serious financial impact than expected, it forwards the case directly to OLAF and informs the AECC of the Agency.

The main work of the investigation team will be to ascertain the existence of the facts and of the evidence concerning the possible involvement of the data subject concerned.

To do so, they may also hold hearings in order to obtain any information relevant to the inquiry but also to present allegations and/or the material evidence obtained to the data subject concerned.

The following persons may be called to attend hearing: direct witnesses, colleagues and persons directly concerned by the administrative inquiry and the persons outside the institutions, subject to their consent.

In practice, depending on the case in question, a call to attend a hearing will be made at the same time as the notification of the opening of the administrative inquiry is sent to the data subject concerned.

The data subject concerned or other persons called to a hearing will be given the possibility to be accompanied or represented at the hearing by their counsel or by another person of their choice (including a staff representative). However, the investigation team will remind these persons of their duty of discretion with regard to what such persons would learn or hear on this occasion.

The hearings will generally begin with a reminder of the context of the administrative inquiry under way.

At the end of each hearing, the investigation team will draft a record of the hearing that has to be read to all the persons present and that has to provide:

- I. A faithful record of what was said during the hearing;
- II. The starting and finishing time of the hearing;
- III. Any corrections of the record made during the sitting.

- Administrative inquiry report

The administrative inquiry report will set out the facts and circumstances in question. It will establish whether the rules and procedures applicable to the situation were respected and will determine any individual responsibility, having regard to aggravating or mitigating circumstances.

The administrative inquiry report will usually consists of five parts:

i. The introduction

The introduction will indicate as appropriate, the completion of the formal procedures related to the mandate issued (i.e. date of issue of mandate, consultation with OLAF, etc.), various aspects of the mandate which have been investigated, members of the investigation team, scope of the investigations (i.e. the services involved, the time period investigated, the administrative assignments, past and present, of the data subject concerned), documentary search techniques used (i.e. use of specific databases, lists of sites where searches were carried out, etc.), persons heard.

ii. The body of the report

The body of the report will relate the findings established in the course of the inquiry for each of the aspects of the mandate, the source of the facts, the establishment of chains of events, the rules in

force at the time of the events, the role of the persons involved, the reasons of the non-possibility to verify allegations when this occurs, the criteria laid down in the Staff Regulations for assessing whether the disciplinary measure, if any, is commensurate.

iii. The conclusions

The conclusions will contain, in summary form, the main evidence, indicating sources (i.e. witnesses' statements, documents, etc.), together with – chiefly in the event of doubt as to its accuracy or relevance of the events – the comments of the persons in charge of the inquiry. The conclusions will also contain a reasoned opinion on the responsibilities, if any, of each of the persons involved, specifying any obligations under the Staff Regulations that have been breached or disregarded.

iv. The recommendations

The recommendations will enable the mandate to suggest to the AECC of the Agency the follow-up to be given to the administrative inquiry (i.e. closing the case without further action or initiating the disciplinary proceeding).

v. The annexes

The annexes will mainly include the mandate issued by the AECC of the Agency, the records of the hearings and documentary evidence.

- Consultation of the Financial Irregularities Panel (PIF)

Before finalisation of the report, the investigation team may ask the AECC of the Agency, to consult the Financial Irregularities Panel (PIF) if necessary (i.e. if the administrative inquiry uncovers evidence of a possible infringement of a provision of the Financial Regulation or of a provision relating to financial management or the checking of operations resulting from an act or omission of the data subject).

If the Financial Irregularities Panel (PIF) is to be consulted, the AECC of the Agency will have to communicate to the PIF, the draft factual conclusions of the administrative inquiry for its opinion. Opinions of the PIF will be delivered to the AECC of the Agency.

Where evidence leads immediately to the opening of disciplinary proceedings without preliminary inquiry, the case will not be referred to the Financial Irregularities Panel (PIF) until after the hearing of the data subject concerned.

- Final report of the administrative inquiry

On completion of the administrative inquiry report, the investigation team will give the possibility to the data subject concerned to comment on all the facts concerning him/her stated in the conclusions of the report. In practice, a summary of the facts relating to him/her is sent to the data subject concerned. The data subject will have 10 working days to agree with the summary. This period may be extended within reason if the data subject concerned is employed or lives abroad.

After the expiring of the above mentioned deadline, the investigation team will forward a final report duly signed and dated to the AECC of the Agency that will allow him/her to decide the course of action to take.

- Pre-disciplinary proceeding (Article 3 of Annex IX of the Staff Regulations)

After the submission of the final administrative inquiry report by the investigation team and before deciding on what action to take, the AECC of the Agency or a designated person will have to hear the data subject concerned to enable him/her to express his/her informed opinion and substantiate all his/her arguments.

This is not applicable where, at the conclusion of the administrative inquiry, no case has been made against the person concerned.

At the end of the hearing, a report will be drawn-up.

Where the AECC of the Agency has designated a person to hold the hearing, this person will have to provide the AECC of the Agency with a report setting out the findings of the hearing and recommendations on action to be taken.

After the hearing or after the submission of the report by the designated person, the AECC of the Agency will decide which of the following action to take:

- i. To close the case
  - ii. To issue a warning
  - iii. To initiate disciplinary proceedings before or not before the Agency Disciplinary Board
- B. Disciplinary proceedings
- With referral to the Agency Disciplinary Board

Disciplinary measures other than the written warning or reprimand will not be imposed without consulting of the Agency Disciplinary Board.

In this context, the AECC of the Agency will submit a report referring the case to the Agency Disciplinary Board, for assessment. The report will set out the facts of which the data subject concerned is accused and review the individual's career (employment record, staff reports, and previous disciplinary record)

The Agency Disciplinary Board will assess the case on the basis of the procedural rules laid down for that purpose. ("Draft procedural rules of the REA Disciplinary Board" - Annex V)

At the end of its works, the Agency Disciplinary Board will deliver a reasoned opinion for the AECC of the Agency as to whether the facts complained of are established and as to any disciplinary penalty to which those facts should give rise.

If the AECC of the Agency feels that the Board has not taken into account all aspects of the file, s/he may refer the case back to the Board on the basis of an additional report drawing its attention to the relevant points.

In such case, a second opinion will have to be addressed to the AECC of the Agency.

Once the AECC of the Agency has received the final reasoned opinion of the Agency Disciplinary Board, s/he will have to hear the data subject concerned to discuss the facts of the case and to allow the data subject concerned the opportunity to set out any attenuating circumstances and challenge any disciplinary measure that is imposed. A record of that hearing will be drawn-up.

The AECC of the Agency will have 2 months from the day of reception of the opinion of the Agency Disciplinary Board, to take its final decision on the disciplinary penalty, if any, to impose.

Once the AECC has taken his/her final decision, it will communicate it to the data subject concerned.

Depending on the nature of the disciplinary measure taken, the relevant services of the Agency or OLAF will be informed if appropriate.

- Without referral to the Agency Disciplinary Board

The same rules referred in the afore-mentioned section will apply with the exception of the rules specific to the Agency Disciplinary Board and the consequences regarding its reasoned opinion.

#### C. Other type of inquiries

In addition to administrative inquiries as referred in the above mentioned point A., the Agency may carry out other kind of inquiries such as:

- Inquiry following a request under Article 24 of the Staff Regulations

In such inquiry, the aim of the investigation team will be to establish the facts on the basis of which the AECC of the Agency will be able to make an informed decision on a request for assistance under Article 24 of the Staff Regulations. The inquiry is not intended to determine any individual responsibility.

i. Opening of the inquiry

Before opening such an inquiry, the AECC of the Agency will carefully examine whether the request for assistance cannot respond until certain facts have been established.

ii. Mandate (Appointment of the Investigation Team)

If an inquiry is opened, the AECC of the Agency will issue a mandate (appointment of an investigation team) which will be the legal basis for the inquiry and which will define its scope. If the inquiry concludes, based on corroborating evidence, that grounds exist for the opening of a disciplinary proceeding providing the appropriate procedural guarantees, the Agency will avoid a duplication of mandate (2 successive inquiries into the same events). The investigation launched in the context of the request for assistance under Article 24 of the Staff Regulations will be used without further formalities in a disciplinary context.

iii. Inquiry report

The inquiry report will intend to enable the AECC of the Agency to reach a proper decision on the request for assistance. The report will consequently state whether some or all of the alleged facts have been established.

Since the purpose of the inquiry is not to decide whether or not the request for assistance is founded, the report will not make any recommendations one way or another.

If the inquiry concludes, based on corroborating evidence, that grounds exist for the opening of a disciplinary proceeding providing the appropriate procedural guarantees, the content of the report will include the necessary information as in the report issued following an administrative inquiry. On completion of the inquiry report, the investigation team will submit the final report to the AECC of the Agency.

iv. Summary report

In addition to the final report, the investigation team will have to prepare a summary report where requested. The summary report will be strictly confined to the facts and will not attribute any individual responsibility.

- Inquiry following a request under Article 73 of the Staff Regulations

In such inquiry, the aim of the investigation team will be to establish the facts recognising the occupational nature of a disease or of an accident of the data subject having requested the assistance under Article 73 of the Staff Regulation. On that basis, the AECC of the Agency will be able to make an informed decision on the request. The inquiry is not intended to determine any individual responsibility.

i. Opening of the inquiry

Before opening the inquiry, the AECC of the Agency will carefully examine whether the request for assistance cannot respond until certain facts have been established.

ii. Appointment of the Investigation Team

If an inquiry is opened, the AECC of the Agency will issue a mandate (appointment of an investigation team) which will be the legal basis for the inquiry and which will define its scope. If the inquiry concludes, based on corroborating evidence, that grounds exist for the opening of a disciplinary proceeding providing the appropriate procedural guarantees, the Agency will avoid a duplication of mandate (2 successive inquiries into the same events). The investigation launched in the context of the request for assistance under Article 73 of the Staff Regulations will be used without further formalities in a disciplinary context.

iii. Inquiry report

The inquiry report will state whether some or all of the alleged facts have been established. Since the purpose of the inquiry is not to decide whether or not the request for assistance is founded, the report will not make any recommendations one way or another.

If the inquiry concludes, based on corroborating evidence, that grounds exist for the opening of a disciplinary proceeding providing the appropriate procedural guarantees, the content of the report will include the necessary information as in the report issued following an administrative inquiry. The inquiry report will be submitted to the AECC of the Agency which will in turn forward it to the doctors appointed in accordance with Article 16 of the common rules on insurance against the risk of accident and occupational disease.

In cases where the requesting data subject cites harassment, a summary of the report will be forwarded to him/her as necessary. The summary report will be strictly confined to the facts and will not attribute any individual responsibility.

- Inquiry following a complaint under Article 90 of the Staff Regulations

The aim of the investigation team will be to establish the facts on the basis of which the AECC of the Agency will be able to make an informed decision on the complaint received under Article 90 of the Staff Regulations. The inquiry is not intended to determine any individual responsibility.

- i. Opening of the inquiry

Before opening such inquiry, the AECC of the Agency will carefully examine if the complaint cannot respond until certain facts have been established.

- ii. Mandate (Appointment of the Investigation Team)

If an inquiry is opened, the AECC of the Agency will issue a mandate (appointment of an investigation team) which will be the legal basis for the inquiry and which will define its scope. If the inquiry concludes, based on corroborating evidence, that grounds exist for the opening of a disciplinary proceeding providing the appropriate procedural guarantees, the Agency will avoid a duplication of mandate (2 successive inquiries into the same events). The investigation launched in the context of the complaint under Article 90 of the Staff Regulations will be used without further formalities in a disciplinary context.

- iii. Inquiry report

The inquiry report will intend to enable the AECC of the Agency to reach a proper decision on the complaint. The report will consequently state whether some or all of the alleged facts have been established.

Since the purpose of the inquiry is not to decide whether or not the complaint is founded, the report will not make any such recommendations one way or another.

If the inquiry concludes, based on corroborating evidence, that grounds exist for the opening of a disciplinary proceeding providing the appropriate procedural guarantees, the content of the report will include the necessary information as in the report issued following an administrative inquiry. On completion of the inquiry report, the investigation team will submit the final report to the AECC of the Agency.

- iv. Summary report

In addition to the final report, the investigation team will have to prepare a summary report which will be forwarded to the complainant upon request. The summary report will be strictly confined to the facts and will not attribute any individual responsibility.

10/ STORAGE MEDIA OF DATA

Data in electronic format are stored on the servers of the REA (limited access) and on the servers (email server, ARES) of the European Commission.

Data in paper format is stored /archived in locked/secure cupboards.

11/ LEGAL BASIS AND LAWFULNESS OF THE PROCESSING OPERATION

- Articles 24, 26, 73, 86, 90 and Annex IX of the Staff Regulations and articles 11, 28, 49, 50, 81, 95, 119 and 124 of the Conditions of Employment of Others Servants;
- Commission Decision C (2004)1588 of 28/04/2004 on the General implementing provisions on the conduct of administrative inquiries and disciplinary proceds which has been adopted by analogy by REA in its decision SC(2009)10 of 20.10.2009 ("Commission Decision C(2004)1588 of 28/04/2004 on the conduct of administrative inquiries and disciplinary proceds" - Annex VIII);
- The common rules on insurance against the risk of accident and occupational disease ("Common rules on the insurance of officials of the European Communities against the risk of accident and occupational disease" - Annex III);
- Article 11 and Annex 1 (relevant to the common rules on insurance and their application in the REA) of the Service Level Agreement (SLA) between the Research Executive Agency (REA) and the Office for Administration and Payment of Individual Entitlements (PMO);
- The Memorandum of Understanding (MoU) between the executive agencies setting up a Disciplinary Board within each executive agency that will be signed after approval of the EDPS. The draft version of the MoU is annexed to the notification ("Draft Memorandum of Understanding on a common list of candidates for Disciplinary Boards of Executive Agencies" - Annex VI);
- The REA decision adopting by analogy the Manual of the investigation and disciplinary office (IDOC). The draft version of the decision is annexed to the notification ("REA Decision on the adoption of the manual of Investigation and Disciplinary Office" - Annex I);
- The procedural rules of the Disciplinary Board to be adopted by the Board after approval of the draft version annexed to the notification ("Procedural rules of the REA Disciplinary Board" - Annex V);
- The Service Level agreement ("SLA") between REA and DG HR signed on 28.02.2012 including the services provided by HR.IDOC as set out in Appendix 4 of the SLA that is annexed to the notification ("Service Level Agreement concerning the collaboration between the Directorate for Human Resources and Security of the European Commission (DG HR) and the Research Executive Agency (REA) - Annex II);
- Article 5 (a) and (b) (Lawfulness of processing) of the Regulation (EC) No 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 and on the free movement of such data.



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

Data may be disclosed to the following recipients on a need-to-know basis:

- REA HR Sector (HR members in charge of the file);
- REA Internal services (Legal Service, Internal Audit);
- Director of the Agency in his/her capacity of Authority Empowered to Conclude Contracts (AECC);
- Head of Department "Administration, Finance and FP7 Support";
- Head of Unit "Administration";
- Head of Sector HR;
- Head of Unit "Finance";
- REA Disciplinary Board;
- Directorate-General Human Resources and Security (DG HR);
- Investigations and Disciplinary Office (IDOC);
- Office for the Administration and Payment of individual Entitlements (PMO);
- Medical Service;
- Doctor(s) Appointed by the Agency;
- Doctor(s) appointed by the data subject concerned;
- Medical Committee;
- European Anti-Fraud Office (OLAF);
- European Data Protection Supervisor (EDPS);
- Financial Irregularities Panel (PIF);
- European Court of Auditors (ECA);
- European Ombudsman;
- Civil Service Tribunal;
- General Court of the European Union;
- European Court of Justice;
- Competent national authorities such as a National Court.

Transfers to competent national authorities such as a National Court may occur where there is an infringement of national law and if such a transfer is necessary for the performance of a task carried out in the public interest or subject to the exercise of public authority of the national authorities. Regarding third countries which have not implemented a comprehensive data protection framework for judicial activities, application of Article 9 of Regulation (EC) No 45/2001 will be considered by

the Agency and it will apply, if necessary, the Council of Europe Convention 108 (Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data) to judicial authorities.

Transfers to financial irregularities panel: where the facts complained lead to suspicion of financial irregularities, the conclusions related to the facts are communicated to the specialised financial irregularities panel {Articles 66(8) and 73(6) of the Financial Regulation (Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002)}.

Any recipient of the data shall be reminded of their obligation not to use the data received for other purposes than the one for which they were transmitted.

The type of recipient may vary according to the type of administrative inquiries and during disciplinary proceedings. A detailed table regrouping the different categories of potential recipients ("Recipients or categories of recipient to whom the data might be disclosed" - Annex VII) has been established in accordance with the categories of personal data processed as detailed in Annex IV.

### 13/ RETENTION POLICY OF (CATEGORIES OF) PERSONAL DATA

Without prejudice to the provisions of article 27 of Annex IX of the SR (deletion of penalty measures from the personal file), personal data in disciplinary cases will be kept beyond the time limits laid down in this article so that account may be taken of the provisions relating to repeated misconduct (Article 10(h) and (i) of Annex IX of the Staff Regulations) in any future disciplinary proceedings.

Administrative inquiries files and disciplinary proceedings files

- Files in cases where a decision has been taken to open disciplinary proceedings will be kept for 20 years from the date on which the AECC of the Agency decides to close the disciplinary proceedings;
- Records of inquiries closed without disciplinary action being taken will be kept for 5 years from the date on which the AECC of the Agency decides not to take action;
- Other cases falling into the five-year category will include those closed without further action being taken at the end of Article 3 of Annex IX of the Staff Regulations phase and those where a warning is issued under Article 3 of Annex IX of the Staff Regulations phase and those where it has not been recommended opening an additional inquiry following positive or negative recommendations by OLAF.
- Other cases falling into the five-year category include files on inquiries outside the disciplinary or pre-disciplinary framework like an inquiry following a request/complaint under Articles 24, 73 and 90 of the Staff Regulations.
- Files which did not lead to the opening of an inquiry ('non-case') will be kept for a period of 2 years from the date on which the AECC of the Agency decides to close the file without follow-up. Files will be kept beyond the time-limits indicated above where they will be required for consultation in the context of legal or administrative procedures (for example claims for damages, requests by the Ombudsman, appeals to the Court of Justice..) which are still pending when the time-limit expires.

#### **Personal files**

Concerning the retention of the disciplinary decision that imposes a charge on the staff member concerned, a copy of the decision will be kept in the personal file of the jobholder according to Article 27 of Annex IX of the Staff Regulations that fixes the delays from when the person

concerned may ask the withdrawal of any mention on the disciplinary measure that figures in the disciplinary file:

- i. 3 years in case of a written warning or reprimand;
- ii. 6 years in case of any other penalty.

The AECC should decide whether to grant this request.

### **Traffic Data**

If the Agency is required to process personal data relating to internet connections and/or the use of e-mail or telephone in the course of an administrative inquiry and/or disciplinary proceedings, personal data will be erased or made anonymous as soon as the specific administrative inquiry and/or disciplinary proceeding is finalised and no longer that the retention period of the disciplinary files, unless they need to be kept for a longer period to establish, exercise or defend a right in a legal claim pending before a Court, OLAF and/or the European Ombudsman.

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

- Time limit to rule on a request: 15 working days (beginning from the reception of the request).
- Blocking period: On a case-by-case basis. Immediately if applicable (maximum delay of 5 working days).
- Erasure Period: Maximum delay of 5 working days after the ruling on the request (if applicable).

14/ HISTORICAL, STATISTICAL OR SCIENTIFIC PURPOSES

Data (Nationality/gender/category) may be kept for statistical purposes but in a form that does not permit identification.

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

### • **In case of transfer to recipients other than the EU Institutions and bodies**

It may occur that personal data are transferred to the competent national authorities such as a National Court where there is an infringement of national law. In such instances, the Agency will apply Article 8 of Regulation (EC) No 45/2001 that provides that personal data will be transferred to the national authorities subject to the national law adopted for the implementation of Directive 95/46/EC only if those authorities establish that the data are necessary for the performance of a task carried out in the public interest or subject to the exercise of public authority.

When personal data has to be transferred at the request of a national authority, the authority will be requested to justify the necessity of the transfer.

If personal data are transferred on the sole initiative of the Agency, the Agency will justify the necessity of the transfer in a reasoned decision. Regarding the countries which have not implemented a comprehensive data protection framework for judicial activities, application of

Article 9 of Regulation (EC) No 45/2001 will be considered by the Agency and it will apply, if necessary, the Council of Europe Convention 108 to judicial authorities.

• **In case of transfer to recipients outside the EU**

In very exceptional circumstances, where there is an infringement of national law, personal data may be transferred to a national authority based outside EU such as a national Court. In that case, the Agency will request those authorities to clearly establish that the requested personal data are necessary for the performance of a task carried out in the public interest or subject to the exercise of public authority.

When personal data has to be transferred at the request of a national authority, the authority will be requested to justify the necessity for the transfer.

If personal data has to be transferred on the sole initiative of the Agency, the Agency has to justify in a reasoned decision the necessity of the transfer.

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,*

↑ Other (general concept in Article 27.1)

17/ COMMENTS

**Related/Relevant documents (SLAs, MoUs, etc.)**

- Annex I - "REA Steering Committee draft Decision on the adoption of the manual of the Investigation and Disciplinary Office";
- Annex II - "Service Level Agreement concerning the collaboration between the Directorate-General for Human Resources and Security of the European Commission (DG HR) and the Research Executive Agency (REA)";
- Annex III - "Common rules on the insurance of officials of the European Communities against the risk of accident and occupational disease";
- Annex IV - "Description of the data or categories of data";
- Annex V - "Draft procedural rules of the REA Disciplinary Board" - to be treated as confidential;

- Annex VI - "Draft Memorandum of Understanding on a common list of candidates for Disciplinary Boards of Executive Agencies" - to be treated as confidential;
- Annex VII - "Recipients or categories of recipient to whom the data might be disclosed";
- Annex VIII - "Commission Decision C (2004)1588 of 28/04/2004 on the conduct of administrative inquiries and disciplinary procedures";
- Specific Privacy Statement relevant to the administrative inquiries and disciplinary proceedings.

PLACE AND DATE: BRUSSELS, 18 SEPTEMBER 2013

DATA PROTECTION OFFICER: EVANGELOS TSAVALOPOULOS

INSTITUTION OR BODY: RESEARCH EXECUTIVE AGENCY (REA)