

(To be filled out in the EDPS' office)
REGISTER NUMBER:1207

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NOTIFICATION FOR PRIOR CHECKING

DATE OF SUBMISSION: 06/12/2013

CASE NUMBER: 2013-1365

INSTITUTION: TEN-T EA

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

INFORMATION TO BE GIVEN²

1/ NAME AND ADDRESS OF THE CONTROLLER

Name: Mr Marcos Roman Parra, Head of Unit, Resources Unit T1
Address: W910 03/042, Trans-European Transport Network Executive Agency (TEN-T EA),
Chaussée de Wavre 910, B-1049 Brussels

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

Resources Unit T1, Human resources

3/ NAME OF THE PROCESSING

Personal files

4/ PURPOSE OR PURPOSES OF THE PROCESSING

The purpose of the processing operation is to secure accurate personal files for the staff in activity, to facilitate access to these files to them and to authorized persons for human resources management purposes and to ensure a better management of confidentiality. This is required to ensure proper and efficient management of HR matters for the staff working in the Agency.

¹ OJ L 8, 12.01.2001.

² **Please attach all necessary backup documents**

5/ DESCRIPTION OF THE CATEGORY OR CATEGORIES OF DATA SUBJECTS

All statutory staff members working at the Agency (seconded EU officials, temporary agents & contractual agents) have a personal file.

Personal files concern staff members in activity and retired persons, local agent and service providers are excluded from this processing.

A personal file is only relating to the activity period. Regarding retired people, there is a distinction between, on one hand, their personal file when in activity managed by their original Institution (i.e. the Agency), which cannot be modified but can be consulted by them once they retired and on the other hand, their specific personal file for "retirement" managed by PMO.4.

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

Data identifying the staff member concerned, data on recruitment, contractual matters and career, determination of rights, emoluments and social security benefits, appeals and disciplinary matters and any other relevant data (e.g.: request for badge access, special id card if relevant, etc.): see Annex 3 for the full content.

No medical data is inserted in the file, except the medical aptitude certificate, which is required during the recruitment phase.

Only relevant data are processed in the light of the Staff Regulation's requirements as regards the criminal record, which is retained until it has been seen by the Court of Auditors or for maximum 2 years, whichever comes first. Once this delay is passed, it is either given back to the staff member or destroyed, and it is replaced instead by an affidavit (see Annex 4), as suggested by the EDPS' Guidelines concerning the processing operations in the field of staff recruitment.

Reasons for leaving a previous post is not a mandatory data requested by the Agency and is only appearing in the file if provided by the Staff Member concerned on a voluntary basis.

7/ INFORMATION TO BE GIVEN TO DATA SUBJECTS

Staff members are informed upon entry into service of the existence and use of the personal file. Information on the personal file is also available on My IntraComm accessible via the intranet of the Agency.

The HR staff administration cell of the Agency is available as helpdesk for any questions relating to this file. Staff members wishing to modify or correct data concerning them can also send a message to the functional mailbox: TENEA-HR-Helpdesk@ec.europa.eu .

Procedures to grant rights to the staff member as data subject are stated in the specific privacy statement relating to the personal files (see Annex 2), which was prepared by the Agency and is also published on its intranet.

A specific privacy statement for Sysper 2 is also available on the top of the main page (Menu) of Sysper 2.

8/ PROCEDURES TO GRANT RIGHTS OF DATA SUBJECTS

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

The staff member can come to the HR department to consult his/her personal file.

The staff member has the right to object to the processing of his/her personal data on legitimate compelling grounds. S/he has access to the HR department where s/he can access & rectify personal data in his/her personal file.

As explained in the specific privacy statements, s/he can exercise his/her recourse right to the DPO or to the EDPS.

9/ AUTOMATED / MANUAL PROCESSING OPERATION

Manual processing: a binder is created for each staff member containing all documents relative to his/her personal data identification, recruitment, contracts and career, determination of rights, emoluments and benefits, appeals and disciplinary matters. This binder is kept in a locked cupboard within the HR Department.

Automated processing: in parallel, the data is also entered and processed in Sysper 2.

10/ STORAGE MEDIA OF DATA

All documents relating to the personal files are kept by the HR department in paper format in locked cupboards and/or stored on Sysper 2.

11/ LEGAL BASIS AND LAWFULNESS OF THE PROCESSING OPERATION

Legal basis:

- Articles 26 and 28 (e) of the Regulation No 31 laying down the Staff Regulations of Officials and the Conditions of Employment of Other Servants (EEC, EURATOM) last amended by Council Regulation (EU) No 1023/2013 of 22 October 2013;
- Article 18 of Council Regulation (EC) N° 58/2003 laying down the statute for executive agencies;
- Commission Decision C(2007)5282 of 5/XI/2007 delegating powers to the TEN-T EA as amended by Decision C(2008)5538 of 7/X/2008;
- Commission Decision C(2007)60/EC of 26 October 2006 establishing the Trans-European Transport Network Executive Agency, modified by Decision 2008/593 of 11 July 2008;
- Administrative notice n° 22/2004: rules for implementing Article 26 of Staff Regulations (see Annex 5).

Grounds of lawfulness:

Regulation (EC) No 45/2001:

- Article 5(a) in conjunction with Recital 27: the processing is necessary for the legitimate exercise of official authority vested in the Community institution or body;

- Article 5 (c) processing is necessary for the performance of a contract to which the data subject is party.

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

- The hierarchical supervisor of the staff member concerned (for the part relating to the performance/evaluation only)
- The Director of the Agency (Appointing Authority)
- Members of the Joint Appraisal and Promotion Committee (JAPC) in case of an appeal
- HR Officer in charge of career development (to manage the staff member's rights, emoluments, etc.)
- The Head of Unit Resources
- The PayMasters Office (PMO) is notified on any modifications that may relate to the rights and entitlements of staff
- DG HR
- The Agency's legal team, the European Court of Justice, and/or the Civil Service Tribunal as well as the lawyers and the agents of the parties in case of a legal procedure
- OLAF in case of an investigation conducted in application of Regulation (EC) No 1073/1999
- The Agency's internal auditor within the scope of the tasks entrusted to him/her by Articles 98 to 100 of the Financial Regulation
- The Court of Auditors within the tasks entrusted to it by Article 287 of the Treaty on the Functioning of the EU and Article 20, paragraph 5 of Council Regulation (EC) No 58/2003
- The European Ombudsman within the scope of the tasks entrusted to it by Article 228 of the Treaty on the Functioning of the EU
- The European Data Protection Supervisor in accordance with Article 47, paragraph 2 of Regulation (EC) N° 45/2001.

13/ RETENTION POLICY OF (CATEGORIES OF) PERSONAL DATA

The documents remain in the personal file until it is destroyed (retention period of 8 years after the extinction of all rights of the staff member concerned and of any dependents, and for at least 120 years after the date of birth of the person concerned).

The criminal record is retained until it has been seen by the Court of Auditors or for maximum 2 years, whichever comes first. Once this delay is passed, it is either given back to the staff member or destroyed, and it is replaced instead by an affidavit (see Annex 4), as suggested by the EDPS' Guidelines concerning the processing operations in the field of staff recruitment.

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

Not applicable.

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

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.

Upon request, the Agency might transfer some anonymous data for future statistical purpose to Commission Services (e.g.: PMO, DG HR).

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, (the personal file contains medical aptitude certificate & criminal record)

Article 27.2.(b)

Processing operations intended to evaluate personal aspects relating to the data subject, (the personal file contains the probationary period report, etc.)

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, (documents relating to the determination of rights: some information in the personal file can lead to the exclusion of some rights: e.g.: family allowances perceived elsewhere at national level lead to the exclusion of the EU family allowances, etc.)

Other (general concept in Article 27.1)

17/ COMMENTS

The legal basis for processing medical certificates regarding staff members can be found in Article 28(e) of the Staff Regulations, which requires that a candidate may be recruited as a member of the

staff only on condition that "s/he is physically fit to perform his duties". Therefore the prohibition of Article 10 (1) of Regulation (EC) N°45/2001 shall not apply as the processing is necessary for the purpose of complying with the specific rights and obligations of the data controller in the field of employment law insofar as it is authorised by the Treaties establishing the EU or other legal instruments adopted on the basis thereof (Article 10(2)(b) Regulation (EC) N°45/2001).

PLACE AND DATE: BRUSSELS, 26/11/2013

DATA PROTECTION OFFICER: CAROLINE MAION

INSTITUTION OR BODY: TRANS-EUROPEAN TRANSPORT NETWORK EXECUTIVE AGENCY