

(To be filled out in the EDPS' office)
REGISTER NUMBER: 1219

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NOTIFICATION FOR PRIOR CHECKING

DATE OF SUBMISSION: 30/01/2014

CASE NUMBER: 2014-0136

INSTITUTION: INEA

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: The Head of Unit of the HR, IT & Logistics Unit R04
Address: W910 03/010, Innovation and Networks Executive Agency (INEA),
Chaussée de Wavre 910,
B-1049 Brussels
INEA-HR-Helpdesk@ec.europa.eu

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

HR, IT & Logistics Unit R04

3/ NAME OF THE PROCESSING

Administrative inquiries and disciplinary proceedings

4/ PURPOSE OR PURPOSES OF THE PROCESSING

The data processing aims at allowing the Authority Empowered to Conclude Contracts (AECC) of the Agency (Director) to evaluate on the basis of information gathered via enquiries if a staff member

¹ OJ L 8, 12.01.2001.

² **Please attach all necessary backup documents**

- is either entitled to obtain the relevant assistance as provided for by Article 24 of the Staff Regulations;
- or may benefit from the insurance against the risk of accident and/or occupational disease as provided for by Article 73 of the Staff Regulations;
- or has a legitimate request against the decision taken by the AECC against him/her pursuant to Article 90 of the Staff Regulations;
- or has failed to comply with his/her obligations under the Staff Regulations and if necessary has to face disciplinary measures under Annex IX of the Staff Regulations;
- or may be subject or not to the launch by the AECC of disciplinary proceedings and penalties as provided for by Article 86 of the Staff Regulations.

5/ DESCRIPTION OF THE CATEGORY OR CATEGORIES OF DATA SUBJECTS

The data subjects are all staff member posted in the Agency (Seconded EU Officials, temporary agents, contractual agents, national experts and trainees).

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 (name, position, office, contact details, position held in the agency/status, personal number,...).
- Data relating to the situation for which the staff member requires assistance.
- Data relating to the conduct, action or inaction of the staff member under investigation and/or subject to disciplinary proceedings and data relating to the legal definition of such action or inaction with regard to the Staff Regulations and to other obligations by which the staff member is bound.
- Data relating to the individual responsibility of the staff member concerned, including financial liability (Article 22 of the Staff Regulations).
- Data relating to the disciplinary penalties imposed on the staff member when applicable

Traffic data:

In case the AECC would consider necessary to process data that relate to Internet connections, email or the telephone use within the context of an administrative inquiry or disciplinary proceeding, he will do so with due observance of the provisions of Articles 20 and 37 of Regulation (EC) N° 45/2001. 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 authorized 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.

7/ INFORMATION TO BE GIVEN TO DATA SUBJECTS

No procedural rules have been adopted by the Agency for administrative investigations and disciplinary procedures since the Agency follows by analogy the proceedings of the Commission. Moreover, in order to guarantee fair processing and transparency in respect of the staff member concerned and having regard to the specific circumstances of the processing operation, the following information is available (under the local Intranet) to all staff members:

- A Specific Privacy Statement (SPS) including information on the elements provided for in Articles 11 & 12 of Regulation (EC) No 45/2001;
- The Agency's manual of procedures describing the administrative inquiries and disciplinary proceedings, with a link to the relevant MyIntracomm webpage;
- The TEN-T EA Steering Committee decision adopting by analogy Commission Decision C(2004)1588 of 28/04/2004 on the conduct of administrative inquiries and disciplinary proceedings;
- The appointment of the Disciplinary Board;

For each of the operations concerned, the Specific Privacy Statement (SPS) as well as the following information will be provided to the staff member concerned:

1) Administrative inquiries:

The staff member will be informed as soon as possible by written notification about the launch of the inquiry. The AECC will inform him/her when the investigation ends and will communicate to him/her the conclusions of the investigation report.

The AECC may communicate on request and subject to the legitimate interests of third parties, all documents directly relating to the allegations made against him/her (e.g.: OLAF).

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

2) Disciplinary proceedings:

- With referral to the Agency Disciplinary Board:

The report submitted to the Agency Disciplinary Board will be communicated to the staff member concerned. The Agency Disciplinary Board opinion will be addressed to him/her. The decision taken by the AECC will be communicated in writing to him/her and will state the grounds on which it is based.

If the AECC decides to close the case without imposing any disciplinary penalty, it will inform the staff member concerned in writing without delay.

An original copy of the decision signed by the AECC will be given to him or her. An acknowledgment of receipt of the decision will have to be signed by the staff member concerned.

- Without referral to the Agency Disciplinary Board:

The decision taken by the AECC will be communicated in writing to the staff member concerned and will state the grounds on which it is based.

An original copy of the decision signed by the AECC will also be given to him/her. An acknowledgment of receipt of the decision will have to be signed by the staff member concerned.

8/ PROCEDURES TO GRANT RIGHTS OF DATA SUBJECTS (Rights of access, to rectify, to block, to erase, to object)

As stated in the SPS, the staff member concerned will have the right to access, rectify, object etc... to the personal data processed. However and especially in the course of a disciplinary procedure, these rights may be restricted on a case-by-case basis within the limits of the possible exemptions set out in Article 20 (1) of Regulation (EC) N° 45/2001 (e.g.: in particular "where such a restriction constitutes a necessary measure to safeguard the prevention, investigation, detection and prosecution of criminal offences"(point a) or (...) the protection of the rights and freedoms of others" (point c)). These exceptions will be strictly applied in light of necessity and be balanced in relation to the right of defence.

The right of access of any person implied in the disciplinary procedure will also be taken into account, such as whistleblowers, informants or witnesses. Any restriction to the right of access of

these persons should be in line with Article 20 of the Regulation. In line with the EDPS guidelines, confidentiality of the identity of whistleblowers (see case 2013-0916 for whistleblowing) will be ensured in the frame of administrative inquiries and disciplinary proceedings in as much as this would not contravene national rules regulating judicial procedures.

To exercise his/her right of rectification and its right of access, the staff member concerned will have to contact the HR Cell either directly or sending an email to its functional mailbox. The procedure will be done in compliance with the relevant Commission's rules, which were adopted by the Agency by analogy.

1) Administrative inquiries

The final report issued by the investigation team is not meant to be consulted or commented upon by the staff member concerned. However for:

- Administrative inquiry under Annex IX of the Staff Regulations: s/he will be given the right to comment on facts concerning him/her before that the investigation team proceeds to any conclusions referring to him/her.
- Inquiry following a request under Article 24 of the Staff Regulations and inquiry following a complaint under Article 90 of the Staff Regulations: s/he will be given the opportunity to ask the summary of the report.
- Inquiry following a request under Article 73 of the Staff Regulations: the staff member concerned, who makes 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.

2) End of administrative inquiries

Once the AECC has forwarded a copy of the conclusions of the report to the staff member concerned, upon request, s/he 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 staff member concerned may ask the AECC of that the decision is inserted in his/her personal file.

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

Prior to the possible initiation of disciplinary proceedings, the staff member concerned will have the right to be acquainted of all evidence in the files and to be heard by the AECC.

In the case of a hearing, the record of the hearing will be submitted to him/her for signature. S/he 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 may decide either closing the case, issue a warning or initiating disciplinary proceedings involving or not the Agency Disciplinary Board.

The warning will be entered in the staff member's personal file. S/he will be given the right to request the withdrawal of the warning from his/her personal file, 18 months after its adoption.

4) Disciplinary proceedings with or without referral to the Agency Disciplinary Board

The report submitted to the Agency Disciplinary Board will be communicated to the staff member concerned. Upon receipt of the report, s/he 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 AECC decides to close the case without imposing any disciplinary penalty, the staff member concerned will be given the opportunity to request that the decision taken by the AECC is inserted in his/her personal file. S/he will also be given the right to request that the damage suffered would be made good through suitable publicity for the decision of the AECC.

Both, the decision and the acknowledgment of receipt will be inserted in his or her personal file.

The staff member 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 afterwards. The same rules will apply in case of proceeding not referred to the Agency Disciplinary Board with the exception of the rules specific to the procedure involving such a board.

9/ AUTOMATED / MANUAL PROCESSING OPERATION

Both automated & manual processing operations are used. The various documents involved in the processing (e.g.: administrative inquiry reports/disciplinary reports, summary reports, record of hearings, documentary evidence, appointment of an investigation team and for disciplinary proceedings: written warning, employment record, staff reports and previous disciplinary record when applicable, etc.) are processed and stored in paper and electronic format.

10/ STORAGE MEDIA OF DATA

Electronic format and paper files storage:

The processing operations managed during the administrative inquiries and disciplinary procedures will be electronically stored on the Agency shared drive and in ARES (to which access is restricted to the relevant persons only). Paper files are stored respectively in the HR archive room (locked). In compliance with the EDPS Guidelines, an administrative inquiry file and/or a disciplinary file will be created and only the final disciplinary decision is kept in the personal file of the staff concerned.

Decisions made during the recourse or appeal procedure will also be included in the disciplinary file and possibly be placed in the personal file (and if applicable to replace the obsolete decision, which will be removed).

11/ LEGAL BASIS AND LAWFULNESS OF THE PROCESSING OPERATION

Legal basis:

- Articles 24, 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 April 2004 on the general implementing provisions on the conduct of administrative inquiries and disciplinary procedures which has been adopted by analogy by the Agency in the Decision SC(2012)18 of the TEN-T EA Steering Committee of 21 June 2012, which amends Decision SC (2009) 03 of 20 April 2009 (see Annex 3);
- Common rules on the insurance of officials of the European Communities against the risk of accident and occupational disease (Annex 4);

- The Service Level agreement between the Agency and DG HR signed on 27 December 2011 including the services provided by HR/IDOC as set out in Appendix 4 (Annex 5);
- Service Level Agreement between the Agency and the Office for Administration and Payment of Individual Entitlements (PMO) (Annex 6);
- IDIOC Manual (Annex 7).
- Commission Decision 2013/801/EU of 23 December 2013 establishing the Innovation and Networks Executive Agency and repealing Decision 2007/60/EC as amended by Decision 2008/593/EC;
- Commission Decision C (2013) 9235 of 23 December 2013 delegating powers to the Innovation and Networks Executive Agency with a view to the performance of tasks linked to the implementation of Union programmes in the field of transport, energy and telecommunications infrastructure and in the field of transport and energy research and innovation comprising, in particular, implementation of appropriations entered in the general budget of the Union.

Lawfulness of the operation:

Article 5 (a) of the Regulation (EC) No 45/2001: conducting disciplinary procedures is necessary for the legitimate exercise of official authority vested in the EU institutions and bodies such as the Agency.

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 (the type of recipient may vary according to the type of administrative inquiries and during disciplinary proceedings):

- INEA HR Sector (HR members in charge of the file);
- INEA Internal services (Legal Service, Internal Audit);
- INEA Director in his capacity of Authority Empowered to Conclude Contracts (AECC);
- INEA Disciplinary Board (see Annex 8);
- 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;
- European Data Protection Supervisor;
- European Court of Auditors;
- European Ombudsman;
- Civil Service Tribunal;
- 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. It should be noted that should the case occur, it is likely that the National Court will be in an EU Member State.

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

13/ RETENTION POLICY OF (CATEGORIES OF) PERSONAL DATA

- Files that have not given rise to administrative investigations will be kept for 2 years from the date of the AECC's decision not to launch such investigations.
- Files relating to investigations 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 decides to close the disciplinary proceedings;
- Records of inquiries closed without disciplinary action will be kept for 5 years from the date on which the AECC decides not to take action;
- Records relating to cases falling under Articles 24 or 90 of the Staff Regulations will be kept for 5 years.
- Files may be kept beyond the time-limits indicated above if 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 timelimit expires. They will be kept until the Agency/Commission has complied with the judgment.

A copy of the disciplinary decision that imposes a charge on the staff member concerned 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:

- 3 years in case of a written warning or reprimand;
- 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 email 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, 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
(Please, specify the time limits for every category, if applicable)

The blocking period will be determined on a case-by-case basis: immediately if applicable or within a maximum period of 5 working days.

The erasure period will be a period of maximum 5 working days after the ruling on the request (if applicable).

The staff member 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 AHCC may decide whether to grant this request. The timeframe for deletion will begin from the date the decision imposing the penalty was adopted.

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

Should the data need to be transferred to jurisdiction in 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 as suggested by the EDPS' Guidelines and the Agency will apply, when necessary, the Council of Europe Convention 108 (Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data) to judicial authorities.

16/ THE PROCESSING OPERATION PRESENTS SPECIFIC RISK WHICH JUSTIFIES PRIOR CHECKING *(Please describe)*

AS FORESEEN IN:

Article 27.2.(a)

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

Article 27.2.(b)

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

Article 27.2.(c)

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

Article 27.2.(d)

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

Other (general concept in Article 27.1)

In light of the above, the processing falls under Art. 27 because

- In some cases, personal data relating to suspected offences, offences and criminal convictions might be processed;
- The processing operation would intend to evaluate personal aspects relating to the data subject facing the proceedings, such as his or her ability and efficiency and professional conduct.
- Disciplinary proceedings may lead to the exclusion of the staff member concerned from a benefit or working contract with the Agency.

17/ COMMENTS

According to Article 7 of Commission Decision 2013/801/EU of 23 December 2013, the Agency is the legal successor of the TEN-T Executive Agency.

The Human Resources sector of the Agency INEA defines, coordinates and ensures implementation of human resources policies 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: this covers the implementation of the procedures for general administrative inquiries and disciplinary issues within the Agency.

The processing of personal data in this framework is considered necessary and is performed in the public interest to comply with the Staff Regulations.

So far the Agency had only one case relating to this matter and this concerned a disciplinary proceeding.

Before the proceeding starts, investigators are reminded to collect only necessary and proportionate data to the purpose of the investigation in light of Article 4 of Regulation (EC) N° 45/2001.

However, in some exceptional circumstances special categories of data may be collected. It could happen, for example, that whilst conducting investigations, data revealing political opinions or data concerning health is found among the information collected. If this is the case, the general rule of prohibition of the processing of such data will apply and only data evaluated in a restrictive manner as necessary for the purposes of complying with Article 10 of Regulation (EC) N°45/2001 will be processed.

PLACE AND DATE: BRUSSELS, 21 /01/2014

DATA PROTECTION OFFICER: CAROLINE MAION

INSTITUTION OR BODY: INNOVATION AND NETWORKS EXECUTIVE AGENCY