

(To be filled out in the EDPS' office)

REGISTER NUMBER: 1254

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NOTIFICATION FOR PRIOR CHECKING

DATE OF SUBMISSION: 11/06/2014

CASE NUMBER: 2014-0628

INSTITUTION: EFCA

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

INFORMATION TO BE GIVEN²

1/ NAME AND ADDRESS OF THE CONTROLLER

European Fisheries Control Agency, Avda. Garcia Barbon, 4, E-36201 Vigo

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

Unit - A, Resources, HR Section
Contact person: Wilhelm Scherzer, HR Officer

3/ NAME OF THE PROCESSING

Administrative inquiries and disciplinary proceedings

4/ PURPOSE OR PURPOSES OF THE PROCESSING

- 1) Follow up by the Appointing Authority, as appropriate, on staff members' failure to comply with their obligations under the Staff Regulations/ CEOS, in accordance with Article 86 of the Staff Regulations
- 2) Enable staff members to have the necessary information to exercise their rights as data subjects

¹ OJ L 8, 12.01.2001.

² **Please attach all necessary backup documents**

5/ DESCRIPTION OF THE CATEGORY OR CATEGORIES OF DATA SUBJECTS

The data processing involves the following persons:

- (a) Staff member (TA, CA) and SNE (by analogy);
- (b) Individuals who participate in an inquiry and disciplinary proceedings in a role other than that of the accused staff member, including witnesses, “whistle-blowers” and others.

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

The data undergoing processing are as follows:

- (a) surname, first name, personnel number, grade/step;
- (b) data relating to status under the Staff Regulations and Conditions of employment of other servants;
- (c) data relating to the conduct, action or inaction of persons under investigation and/or subject to disciplinary proceedings;
- (d) data relating to the legal definition of such action or inaction with regard to the Staff Regulations and to other obligations by which the persons in question are bound;
- (e) data relating to the individual responsibility of the persons concerned, including financial liability;
- (f) data relating to penalties imposed on the persons concerned, if required.

Special categories of data

Prohibition, in principle, of processing of special categories of data according to Article 10(1) of R. 45/2001, save in the exceptional circumstances as indicated below.

In some exceptional circumstances these categories of data may be collected. It could happen, for example, that whilst conducting investigations, e-mails exchanged by the data subject with trade unions or with the EU Sickness insurance scheme may be found, revealing political opinions or data concerning health respectively.

If this is the case, the general rule of prohibition of the processing of such data applies or otherwise, it has to be evaluated in a restrictive manner whether the processing of such data would be considered as "necessary for the purposes of complying with the specific rights and obligations of the controller in the field of employment law insofar as it is authorised by the Treaties establishing the European Communities or other legal instruments adopted on the basis thereof" (see Article 10(2)(b)).

In certain exceptional cases, the processing of such sensitive data could also be based on reasons of substantial public interest and a decision of the EDPS in accordance with Article 10(4).

In any event, the controller in charge should ensure that the investigators responsible for an administrative or disciplinary inquiry are made aware of the restrictive rules which apply to the processing of these special categories of data and avoid the inclusion of these data unless one of the circumstances foreseen in Article 10(2) - in a restrictive sense, as mentioned above - is present in the particular case under investigation, or Article 10(4) can be applied.

Administrative investigation files and disciplinary files are likely to contain data relating to offences, criminal convictions or security measures. Processing of such data is subject to authorisation in accordance with Article 10(5) of R. 45/2001. The decisions implementing Article 86 of the Staff

Regulations and, by analogy, Articles 49 to 51 and 119 of the CEOS should be regarded as an authorisation to process these data.

The DPO is consulted before any processing referred to in the above paragraphs.

Traffic data and confidentiality of electronic communications

Processing of personal data relating to Internet connections and the use of e-mail or the telephone in the course of administrative inquiries and disciplinary proceedings may be carried out by EFCA. This data shall be erased or made anonymous as soon as possible and no later than six months after collection, unless it needs to be kept for a longer period to establish, exercise or defend a right in a legal claim pending before a court.

If, in the course of administrative inquiries or disciplinary proceedings, the need arises to gain access to electronic communications, the restriction of the confidentiality principle must be in accordance with the general principles of European Union Law.

These restrictions can be allowed only in exceptional circumstances where no other less invasive method could be used and after the DPO is consulted on this matter. Such restrictions may take place only if it is in accordance with Article 20 of the Data Protection Regulation.

In any event, the controller in charge should ensure that the investigators responsible for an administrative or disciplinary inquiry are made aware of the above restrictions.

7/ INFORMATION TO BE GIVEN TO DATA SUBJECTS

A **specific privacy statement** is available on EFCA's intranet (Annex I).

The right to information can be restricted in certain cases if it constitutes a necessary measure in accordance with Article 20(1)(a) and (c) of the Data Protection Regulation. The data controller should inform the staff member of the principal reasons on which the application of the restriction is based as well as of his/ her right to have recourse against that decision to the European Data Protection Supervisor under Article 20(3) of the Data Protection Regulation.

8/ PROCEDURES TO GRANT RIGHTS OF DATA SUBJECTS

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

Without prejudice to Article 6 of EFCA's draft rules (Annex II), and to Article 22(a) and 22(b) of the Staff Regulations, the staff member is informed of his right of access to various documents concerning him in the event of a disciplinary proceeding.

The staff member can request access and copies of all documents directly related to the allegations made against him, except documents for which disclosure could jeopardize the privacy and right to data protection of third parties, or the legitimate guarantees given to the "whistle-blowers". When disclosure of the full document is not possible for the reasons explained above, the staff member should have access, whenever it is possible, to at least an abridged version or excerpts of the documents.

The staff member has the right to rectification in order to ensure completeness of his disciplinary file. This may be done, inter alia, by allowing him to add his comments.

Any exceptions to the right of access of staff members should be strictly applied in light of necessity and they should be balanced in relation to the right of defence.

Particularly, in the case of “whistle-blowers”, informants or witnesses, any restriction to the right of access should not be allowed unless such restriction is made in accordance with Article 20 of the Data Protection Regulation. In any case, the identity of “whistle-blowers” should be kept confidential in as much as this would not contravene national rules regarding judicial procedures.

9/ AUTOMATED / MANUAL PROCESSING OPERATION

In the course of conducting administrative inquiries and disciplinary proceeding, as well as with regard to the disciplinary reports, the personal data collected and processed is restricted to the necessary and proportionate for the purpose of establishing the facts and, where necessary, determine whether there has been a failure to comply with the obligations incumbent on EFCA staff members.

The information and documents generated through the administrative inquiry and in the context of the above mentioned disciplinary procedures will be stored in paper form in EFCA “administrative inquiries and disciplinary procedures” file. The file will be structured by reference to individual inquiries.

The HR Section will keep the EFCA “administrative inquiries and disciplinary procedures” file.

In addition, a copy of the decision taken in the context of administrative inquiries will also be stored in the personal file of the staff member. This includes the copy of the decision to take no further action if the staff member requires so.

A copy of the disciplinary decision will be stored in the personal file of the staff member involved, taking into account the provision of Article 27 of Annex IX to the Staff Regulations concerning the request of deletion of such data.

When the Executive Director decides to close a case without imposing any disciplinary penalty, there shall be no traces of the acquittal decision in the personal file, unless the staff member requests so.

Upon their appointment, investigators and members of the disciplinary board receive this notification.

10/ STORAGE MEDIA OF DATA

Paper files are kept in an armoured cupboard in the HR Office which is locked during absences of HR Section staff. Electronic documents are stored in restricted part of p-drive with access to HR Section only.

11/ LEGAL BASIS AND LAWFULNESS OF THE PROCESSING OPERATION

Article 86 and Annex IX to the Staff Regulations; Article 110 of the Staff Regulations; Articles 49, 50 and 119 CEOS;

Draft decision of EFCA's Administrative Board laying down the General Implementing Provisions on the Conduct of Administrative Inquiries and Disciplinary Procedures (Annex II)

Article 5(a) of Regulation 45/2001: Clearly in public interest and covered by mandate of EFCA as laid down in EC Regulation 768/2005;

The operation is performed in the public interest, as the procedures aim to adequately conduct administrative inquiries and disciplinary proceedings and therefore contribute to management of resources and functioning of EFCA.

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

Human Resources Section
Head of Unit Resources
Legal Officer
Executive Director
Investigators

Personal data may in the course of an investigation be transmitted to OLAF as evidence of fraud and following an administrative inquiry conducted by OLAF.

Where the disciplinary decision has a financial impact or involves a change in the grade it is forwarded to the HR Section for the adjustment of the salary. The HR Section then requests the salary adjustment to the Paymaster's Office.

If the staff member contests an Executive Director's decision, the disciplinary file may be referred to the Court of Justice of the European Union.

13/ RETENTION POLICY OF (CATEGORIES OF) PERSONAL DATA

Regarding conservation periods, the following rules shall apply:

- a) Files which have led to the opening of a disciplinary procedure will be stored for a period of 20 years starting from the date of the Executive Director's decision concluding the procedure;
- b) Files where the Executive Director decides that no case can be made against the staff member or where a warning is issued shall be stored for a period of 5 years.

Files and all related information may be deleted upon request of the staff member after a period of:

- a) Eighteen months in the case of a warning;
- b) Three years in the case of the penalty of a written warning or reprimand;
- c) Six years in the case of another penalty.

The decision to grant the request is taken by the Executive Director. If the Executive Director denies the request, his decision must be duly justified.

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

As appropriate

14/ HISTORICAL, STATISTICAL OR SCIENTIFIC PURPOSES

n/a

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*):

See point 6 above

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)

17/ COMMENTS

PLACE AND DATE: Vigo, 4 June 2014

DATA PROTECTION OFFICER: Rieke Arndt

INSTITUTION OR BODY: EFCA

1254/2014-0628