

(To be filled out in the EDPS' office)

REGISTER NUMBER: 1262

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NOTIFICATION FOR PRIOR CHECKING

DATE OF SUBMISSION: 11/08/2014

CASE NUMBER: 2014-0805

INSTITUTION: ERCEA

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 Research Council Executive Agency (ERCEA)
COV2
B-1049 BRUSSELS
BELGIUM

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

ERCEA, represented by Pablo Amor (Director), COV2 24/130, B-1049 Brussels

Co-Controller: Carina Lenarduzzi (Head of Unit D.2), Human Resources, Infrastructure and Document Management, COV2 20/045, B-1049 Brussels

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
- F. Whistleblowing

¹ OJ L 8, 12.01.2001.

² Please attach all necessary backup documents

The human resources unit of the ERCEA (hereinafter referred to as "ERCEA HR") 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 a task performed in the public interest as provided for in the Staff Regulations and necessary to comply with the Staff Regulations.

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

Information is gathered to allow the Authority Responsible for Concluding Contracts of Employment (AHCC) 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, 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 a data subject's personal responsibility through disciplinary measures.

In this context, the ERCEA 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 European Research Council Executive Agency (ERCEA)" – 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 complaint procedure 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 are conducted by the Agency based on its art. 90 procedure ("*Guidelines on the management of requests and complaints in human resources matters within the ERCEA*", annex XII, together with the related Specific Privacy Statement, Annex XIII).

E. Disciplinary proceedings

Disciplinary proceedings may be launched by the AECC of the Agency against the data subject 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 to 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 to 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.

F. Whistleblowing

As per Article 22a of the Staff Regulations ERCEA staff members that become aware of serious wrongdoing and/or illegal activities are under the statutory obligation to come forward with the relevant information ("whistleblower").

The whistleblowing procedure defines the channels via which the whistleblower can act while at the same time protecting the whistleblower against prejudicial effects on the whistleblower from the part of the Agency and his/her management/colleagues. The ERCEA has defined a whistleblowing procedure (Annex XI) that allows the whistleblower to either report to Agency management directly or via OLAF.

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, whistleblower) 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.

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 (on dedicated pages for each topic of 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 (Annex X);
- the ERCEA Steering Committee Decision on the Adoption of Implementing Rules to the Staff Regulations StC(2014)191213/4b (Annex XIII);
- the Memorandum of Understanding ("MoU") between the executive agencies setting up a Disciplinary Board within each executive agency;
- the ERCEA 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 ERCEA and DG HR;
- the appointment of the ERCEA Disciplinary Board;
- the procedural rules of the ERCEA Disciplinary Board;
- the ERCEA whistle-blowing procedure and related SPS (Annex XI)
- the ERCEA "Guidelines on the management of requests and complaints in human resources matters within the ERCEA", including a SPS (Annex 6 to the Guidelines and Annex XII to this notification)
- All relevant legal bases in relation with administrative inquiries procedures and disciplinary proceedings.

For each of the following operations, the SPS as well as the following information will be provided to the data subject:

A. Administrative inquiries

- Administrative inquiries under Annex IX of the Staff Regulations

As soon as an 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 SPS will be included in the information given to the data subject.

The AECC of the Agency will inform the data subject 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 as above will apply.

- Inquiries following a request under Article 24, 73 or 90 of the Staff Regulations

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

Article 24 and 90:

If any, the persons questioned during the hearings (e.g. alleged harasser) will also be informed of the outcome of the inquiry.

Article 73:

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

B. The Mandate (administrative inquiries by IDOC)

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 to in point A.

D. Closure of administrative inquiries

Once the investigation report has been submitted to the AECC of the Agency, the data subject will be informed by the AECC of the Agency that the inquiry has been completed. If the case is closed without further action, the AECC of the Agency will promptly inform the data subject in writing to this effect. Otherwise, a copy of the conclusions of the report will be sent to him/her. In case of admonition issued by the superior of the data subject, 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 notified of all evidence in his/her file.

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

- a) close the case. The data subject will be informed accordingly in writing by the AECC.
- b) issue a warning. The AECC of the Agency will address the warning to the data subject.
- c) initiate disciplinary proceedings before or not before the Agency Disciplinary Board. The AECC of the Agency will notify the data subject of the 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 communicated to the data subject. The Agency Disciplinary Board will address any opinion (first or second) directly to the data subject.

The decision taken by the AECC will be communicated to the data subject in writing and include the grounds on which it is based.

If the AECC of the Agency decides to close the case without imposing any disciplinary penalty, the data subject will be informed in writing without delay.

An original copy of the decision signed by the AECC of the Agency will be given to the data subject against an acknowledgment of receipt.

- Without referral to the Agency Disciplinary Board

The decision taken by the AECC will be communicated in writing to the data subject 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 against an acknowledgment of receipt.

G. Whistleblowing

Any information provided by a whistleblower will be provided to OLAF for further treatment. Either OLAF or the Agency will provide the whistleblower with confirmation of receipt of the information within 60 working days. OLAF will then ensure the information of the data subject during the investigation and about its result.

8/ PROCEDURES TO GRANT RIGHTS OF DATA SUBJECTS

To exercise his/her right of rectification and its right of access the data subject can contact the controller by sending an email to the functional mailbox ERCEA LEGAL MATTERS, or for guidance and support to the ERCEA Ethics Correspondent, at any time for administrative and disciplinary proceedings. For whistleblowing, the Director of the Agency or, alternatively, OLAF can also be contacted directly and direct contact with the DPO and/or EDPS concerning the rights under Regulation (EC) 45/2001 is promoted in the Privacy Statement.

Further, the data subject shall have the following rights of access to and/or rectification of their personal data in each of the processing operations:

A. Administrative inquiries

The final report issued by the investigation team is not meant to be consulted or commented upon by the data subject in any of the following cases. However:

- Administrative inquiry under Annex IX of the Staff Regulations

The data subject 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 has committed irregularity. His consultation phase will apply only to the part of the conclusions containing all facts relating to the data subject under investigation. The conclusions of the final report issued by the investigation team will make reference to any comments made by the data subject.

In practice, the data subject will be sent a summary of the facts relating to him/her and will be allowed 10 working days to review the summary. This period may be extended on a case-by-case basis.

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 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 has been given a chance to comment.

Starting from the day after the data subject exercises his/her right of access to the facts concerning him/her, the data subject will be given time in which to make any comments. If several data subjects exercise their right of access to the facts concerning themselves, and one of them makes comments or observations that disclose new information concerning any of the other persons, those data subjects will be consulted in relation to the new information.

The AECC of the Agency will inform the data subject when the investigation ends, 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 as above apply.

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

The originator of the request will be given the opportunity to request a summary of the report for information about the outcome of the inquiry.

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

Data subjects may have access to the inquiry report 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.
- The insured party or those entitled will be given the opportunity to request that the Medical Committee (as per 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 as a cause, a summary of the inquiry report will be forwarded to him/her. The summary report will be strictly confined to the facts.

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

The originator of the complaint will be given the opportunity to ask the summary of the report to receive information on the outcome of the inquiry.

Also, if the Financial Irregularities Panel (PIF) is consulted, opinions of the PIF will be disclosed to the data subject.

B. Hearings during administrative inquiries

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

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

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, upon request access will be given to all documents directly linked to the allegations made, subject to the protection of 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 that relate to each of them individually.

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

D. Pre-disciplinary proceedings (Article 3 of Annex IX of the Staff Regulations) – if applicable

Prior to the possible initiation of disciplinary proceedings, the data subject will have the right to be apprised of all evidence in the files and to be heard by the AECC of the Agency.

A record of any hearing of the data subject 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 his/her case.

Following the proceedings above, the AECC of the Agency may decide to:

- close the case
- issue a warning

The warning will be entered into the data subject'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.

- or 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.

Upon receipt of the report, the data subject will be given the right to obtain his/her complete personal disciplinary file and to take copies of all documents relevant to the proceedings, including exonerating evidence. Both, the decision and the acknowledgment of receipt will be inserted into the data subject's personal file.

The data subject 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:

- i. three (3) years for written warnings/reprimand;
- ii. six (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.

In case the appointing authority decides to close the case without imposing any disciplinary penalty, the data subject will be given the opportunity to request that the decision taken by the AECC of the Agency is inserted into 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.

- Without referral to the Agency Disciplinary Board

The same rules referred to in the section above apply to the exception of the rules specific to the procedure that involves the Agency Disciplinary Board.

F. Whistleblowing

The Agency will provide any information received from the whistleblower directly to OLAF. Upon receipt of information from a whistleblower, OLAF will inform the whistleblower of his/her rights as per articles 13, 14 and 20 of Regulation (EC) 45/2001. (Anonymous) reporting is possible directly to OLAF via the free-phone service (EDPS notification 2007-0074) or the Fraud Notification System (FNS, EDPS notification 2007-0481).

OLAF or the Agency must give the whistleblower an indication of the time needed to take appropriate action. Within 60 days of receipt of the information, either OLAF or the Agency will inform the whistleblower if a formal investigation is launched (Article 22b of the Staff Regulations). If no action is taken within that period of time, or if the whistleblower can demonstrate that the period of time set is unreasonable in light of all the circumstances of the case, he or she may address his or her concerns to one of the other institutions referred to in Article 22b(1) of the Staff Regulations. (Section 2.3 of the Whistleblowing procedure, Annex IX). OLAF will inform the whistleblower of the outcome of the investigation.

Section 2.7 of the Whistleblowing procedure (Annex IX) refers to the rights granted with reference to Regulation (EC) 45/2001, and the ERCEA intranet page on fraud includes a part on whistleblowing that is presented together with references to the Early Warning System procedure³ and direct links to OLAF's contact point.

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 an 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 - an administrative inquiry for the same purpose. Personal data will therefore be disclosed to OLAF.

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 two AD levels case handlers, one from DG HR/IDOC and one from the Agency, as well as an assistant from the Agency. In addition to these mandates and depending on the complexity or scale of the case, the AECC of the Agency has the possibility to appoint more members to form part of the investigation team.

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

- Tasks 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

³ Notified to the EDPS under case 2012-0823.

or be interpreted as so doing, or give rise to a conflict of interests s/he will 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 opened.

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 task of the investigation team is to ascertain the existence of the facts and of the evidence concerning the possible involvement of the data subject. To do so, they may 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.

The following persons may be called to attend a 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.

The data subject 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 provides:

- i. a faithful record of what was said during the hearing;
- ii. the start and end 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 usually consists of five parts:

i. The introduction

The introduction indicates 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, time period investigated, administrative assignments, past and present, of the data subject), documentary search techniques used (i.e. use of specific databases, lists of sites where searches were carried out, etc.) and persons heard.

ii. The body of the report

The body of the report relates the findings established in the course of the inquiry for each of the aspects of the mandate, source of the facts, establishment of chains of events, rules in force at the time of the events, role of the persons involved, reasons of the non-possibility to verify allegations when this occurs and the criteria laid down in the Staff Regulations for assessing whether the disciplinary measure, if any, is commensurate.

iii. The conclusions

The conclusions 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 enable the mandate to suggest to the AECC the follow-up to be given to the inquiry (i.e. closing the case without further action or initiating disciplinary proceedings).

v. The annexes

The annexes 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 finalising the report, the investigation team may ask the AECC of the Agency to consult the Financial Irregularities Panel (PIF) (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). 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. If the Financial Irregularities Panel (PIF) is to be consulted, the AECC communicates to the PIF the draft factual conclusions of the administrative inquiry for its opinion.

- Final report of the administrative inquiry

On completion of the administrative inquiry report, the investigation team will give the data subject the possibility to comment on all 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 and the data subject has 10 working days to comment. This period may be extended in specific circumstances. After the expiration of the above mentioned deadline, the investigation team forwards 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 has to hear the data subject 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. Where the AECC of the Agency has designated a person to hold the hearing, this person provides 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 actions to take:

- i. close the case
- ii. issue a warning
- iii. 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 consultation of the Agency Disciplinary Board.

In this context, the AECC of the Agency submits a report referring the case to the Agency Disciplinary Board for assessment. The report will set out the facts of which the data subject 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 ERCEA Disciplinary Board" - Annex V)

After reviewing the case, the Agency Disciplinary Board will deliver a reasoned opinion to 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 feels that the Board has not taken into account all aspects of the file, s/he may refer the case back to the Board drawing its attention to the relevant points. The Agency Disciplinary Board will then address a second opinion 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 hears the data subject to discuss the facts of the case and to give the data subject the opportunity to set out any attenuating circumstances and challenge any disciplinary measure suggested. A record of that hearing will be drafted.

The AECC of the Agency has two months from the day of reception of the opinion of the Agency Disciplinary Board to take his/her final decision on the disciplinary penalty to impose, if any.

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

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

- Without referral to the Agency Disciplinary Board

The same rules referred in the afore-mentioned section apply to 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, Article 73 or Article 90 of the Staff Regulations

In such an inquiry, the aim of the investigation team is to establish the facts which enable the AECC of the Agency to make an informed decision on a request for assistance under Article 24 of the Staff Regulations or 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. 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 already be responded before 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 defines 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 (two 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 shall enable the AECC of the Agency to reach a proper decision. The report will consequently state which of the alleged facts could be 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, the investigation team submits the final report to the Agency's AECC.

In case of an Article 73 inquiry, the AECC 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.

iv. Summary report

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

D. Whistleblowing

The Agency will provide any information received from the whistleblower directly to OLAF. Either OLAF or the Agency will inform the whistleblower if a formal investigation is launched. OLAF will inform the whistleblower of the outcome of the investigation as per the ERCEA whistleblowing procedure (Annex XI).

10/ STORAGE MEDIA OF DATA

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

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 proceedings which has been adopted by analogy by ERCEA in its Decision of the Steering Committee of the ERCEA on the Adoption of Implementing Rules to the Staff Regulations StC(2014)191213/4b - Annex XIV);
 - 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 ERCEA) of the Service Level Agreement (SLA) between the European Research Council Executive Agency (ERCEA) 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 ERCEA decision adopting by analogy the Manual of the investigation and disciplinary office (IDOC). The draft version of the decision is annexed to the notification ("ERCEA 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 ERCEA Disciplinary Board" - Annex V);
 - The Service Level agreement ("SLA") between ERCEA 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 European Research Council Executive Agency (ERCEA) - Annex II);
 - The ERCEA whistleblowing procedure (Annex XI)
 - The ERCEA Guidelines on the management of requests and complaints in human resources matters within the ERCEA (Annex XII)
- 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:

- ERCEA HR Sector (HR members in charge of the file)
- ERCEA Internal services (Legal Service, Internal Audit)
- Director of the Agency in his/her capacity as Authorised Officer by Delegation and Authority responsible for Concluding Contracts of Employment (AHCC)
- Head of Department "Administration, Finance and FP7 Support";
- Head of Unit "Administration";
- Head of Sector HR;
- Head of Unit "Finance";
- ERCEA Disciplinary Board;
- Chair of the ERCEA Steering Committee;
- 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;
- Medical Committee;
- European Ombudsman;
- European Anti-Fraud Office (OLAF);
- European Data Protection Supervisor (EDPS);
- Financial Irregularities Panel (PIF);
- European Court of Auditors (ECA);
- 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 panels: 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, during disciplinary proceedings or in a whistleblowing investigation. 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 twenty (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 five (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, 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 two (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 etc.) which are still pending when the time-limit expires.

Personal files

Concerning the retention of the disciplinary decisions 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:

- three (3) years in case of a written warning or reprimand;
- six (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.

Whistleblowing

In line with the policy on the retention of material in relation to OLAF case work, data will be kept for a period of twenty (20) years if it is relevant to an OLAF investigation, ten (10) years if it is exchanged with a Member State under a Mutual Assistance agreement, three (3) years if it is exchanged with a Member State under "irregularities", and five (5) years if it is classified as a non-case.

If the case is not relevant to OLAF, related data will be retained for a maximum of five (5) years, as per the Commission's Common Retention List (CRL - SEC(2012)713).

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 and security of 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 for and security of the transfer.

16/ THE PROCESSING OPERATION PRESENTS A 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)

17/ COMMENTS

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

- Annex I - ERCEA 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 (ERCEA), of 23/1/2012
- 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 ERCEA 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 - Guidelines on the management or requests and complaints in human resources matters within the ERCEA, of 6/11/2013
- Annex IX - Commission Decision C (2004)1588 of 28/04/2004 on the conduct of administrative inquiries and disciplinary procedures
- Annex X – Specific Privacy Statement relevant to the administrative inquiries and disciplinary proceedings
- Annex XI – ERCEA whistleblowing procedure, reporting template and privacy statement
- Annex XII – ERCEA Guidelines on the management of requests and complaints in human resources matters within the ERCEA
- Annex XIII – Specific Privacy Statement (Annex 7 to the ERCEA Guidelines on the management of requests and complaints in human resources matters within the ERCEA
- Annex XIV – ERCEA Steering Committee Decision on the Adoption of Implementing Rules to the Staff Regulations StC(2014)191213/4b.

PLACE AND DATE: BRUSSELS, 08 AUGUST 2014

DATA PROTECTION OFFICER: NADINE KOLLOCZEK

INSTITUTION OR BODY: EUROPEAN RESEARCH COUNCIL EXECUTIVE AGENCY (ERCEA)