

(To be filled out in the EDPS' office)

REGISTER NUMBER: 1361

(ONLY IN CASE OF PRIOR CHECKING BY EDPS: To be filled out in the EDPS' office)

NOTIFICATION FOR PRIOR CHECKING

DATE OF SUBMISSION: 26-01-2016

CASE NUMBER: 2016-0087

INSTITUTION: FUSION FOR ENERGY

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

NOTIFICATION

1/ NAME AND ADDRESS OF THE CONTROLLER

The European Joint Undertaking for ITER and the Development of Fusion for Energy (F4E)
C./ Josep Pla, n° 2,
Torres Diagonal Litoral,
Edificio B3,
08019 Barcelona, Spain

Controller: Hans Jahreiss, Head of Administration

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

Administration Department, Directors Office

3/ NAME OF THE PROCESSING

Fusion for Energy (F4E) Rules concerning disclosure in the public interest (“**Whistleblowing**”)².

This notification concerns the data processing of the whistleblowing procedure (only) within F4E³, i.e. option 1 of the internal reporting and possible request for guidance. *See Chart of reporting Channels attached to F4E Whistleblowing Rules (ANNEX II).*

¹ OJ L 8, 12.01.2001.

² Notwithstanding the F4E notification on administrative inquiries C-2013-0808.

³ Not covering the reporting to OLAF or other institutions.

4/ **PURPOSE AND DESCRIPTION OF THE PROCESSING**

The purpose of this procedure is to enable the reporting of “serious irregularities” (illegal activities including fraud, corruption and serious professional misconduct or wrongdoings) within F4E.

This requires establishing reporting channels for whistleblowers, managing and following-up reports, and ensuring protection and adequate remedies for whistleblowers.

The rules set up procedures to be followed for reporting serious irregularities including what, when and to whom staff members should report.

In accordance with Article 22 a) - c) of the Staff Regulations (SR), as well as Articles 11 and 81 of the Conditions of Employment of Other Servants of the European Union (CEOS).

5/ **DESCRIPTION OF THE DATA SUBJECTS**

All staff members of F4E covered by the Staff Regulations of Officials of the European Union (SR) and the Conditions of Employment of Other Servants of the European Union (CEOS), as well as Seconded National Experts and Trainees, (hereafter referred to as “staff” or “staff member”).

The data subjects usually include whistleblowers, witnesses, members of staff and the accused person(s).

6/ **DESCRIPTION OF THE DATA OR CATEGORIES OF DATA**

(including, if applicable, special categories of data (Article 10) and/or origin of data).

The personal data processed are contained in the report submitted by the whistleblower and any subsequent document drawn up in response to that initial report. These documents may in particular contain names, contact details, and other personal data. Special categories of data (Article 10) should not be included.

With regard to the data quality and according to the principle of proportionality, the data must be necessary to comply with the performance obligations according to Art. 22 a) - c) SR.

If the report contains personal information that is clearly not relevant for examining the issues raised in the report, the information will be erased as soon as possible, after consulting the whistleblower to the extent that this is possible without the substantive examination being unduly delayed.

F4E seeks to protect the identity of whistleblowers and the confidentiality of the report received, as well as the identity of all other persons involved.

7/ **INFORMATION TO BE GIVEN TO DATA SUBJECTS**

A Specific Privacy Notice

- is published in the F4E intranet, providing staff members with the information required under Articles 11 and 12 of the Regulation (EC) 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 on the free movement of such data.
- Will also be provided to all persons involved in a particular whistleblowing procedure as soon as practically possible.

See Privacy Notice attached in ANNEX I.

Furthermore, any staff member implicated in reports of serious misconduct shall be informed in good time of the allegations made against them, in case the Director decides that no administrative inquiry is justified. Where the Director decides to open an administrative inquiry, staff implicated shall benefit from the procedural guarantees laid down in the respective rules, applicable to F4E⁴.

Where there is a substantial risk that a notification would jeopardise the ability of F4E to effectively investigate the allegations or gather the necessary evidence, notification may be deferred as long as such a risk exists.

Upon termination of any administrative inquiry, the staff member(s) concerned by the inquiry shall be informed when the investigation ends and shall receive the conclusions of the investigation report and, on request and subject to the protection of the legitimate interests of third parties, all documents directly related to the allegations made against him.

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

Right of access: according to Article 13 of Regulation 45/2001, the data subjects have the right of access to their data being processed by contacting the Fusion for Energy Data Controller. Subject to limitations mentioned below.

A staff member can request access and copies of all documents directly related to the allegations made against him/her, subject to the protections of the legitimate interests of third parties or the legitimate guarantees given to the whistleblowers. When disclosure of the full document is not possible for the reasons explained above, the staff member may be granted access, to at least a redacted version or excerpts of the documents.

When replying to the access request, and before determining the scope of the data subject's right to access, special attention will be given to the definition of the concept of personal data. Personal data not only relate to information about an individual's private life in a strict sense, but also to information regarding an individual's activities, such as his or her working relations and economic or

⁴ See F4E notification on administrative inquiries C-2013-0808.

social behaviour. Information can relate to an individual because of its content, the purpose of its use and the result of its use.

When considering access rights F4E may also consider the status of the requester and the current stage of the investigation if any. Any such reason for restricting data subject's right should be justified.

The person(s) potentially implicated in the alleged wrongdoings, as well as all third parties mentioned in the report (e.g. witnesses) also have a right of confidentiality as regards their identity (see Art. 8 of F4E whistleblowing rules). This protection shall be guaranteed by the fact that their identity will be treated in confidence. I.e their name will not be revealed to any other person without a strict need to know, unless this is a requirement in any subsequent criminal law proceedings. In any case, F4E is committed to keeping the identity of the person potentially implicated in the alleged wrongdoings and the identity of third parties mentioned in the report strictly confidential.

Right of rectification: according to Article 14 of Regulation 45/2001, the data subjects have also a right to obtain the rectification of their data that are inaccurate or incomplete, without delay by contacting the Data Controller at any time.

Right of blocking: according to Article 15 of Regulation 45/2001, the data subjects have also the right to obtain from Data Controller blocking of their data when:

- They contest the accuracy of the data;
- The controller no longer needs them but they need to be maintained for purposes of proof;
- The processing is unlawful and the data subject requests blocking instead of erasure.

Personal data blocked shall only be processed for the purpose of proof (with the consent of the data subject) or for the protection of the rights of a third party.

Right of erasure: according to Article 16 of Regulation 45/2001, the data subjects can request the cancellation of their personal data if they consider that they are subject to an unlawful processing.

Right to object: according to Article 18 of Regulation 45/2001n the data subjects can object the processing of their personal data unless the processing is needed for the purposes of Article 5b) and d) of Regulation 45/2001:

- On legitimate grounds relating to their particular situation
- Before their personal data are disclosed to third parties.

In case an administrative inquiry or disciplinary proceeding is opened, the staff member(s) can also exercise the rights according to F4Es prior checking notification C-2013-0808).

Limitations:

Article 20(1) of Regulation 45/2001 states that the data controller may restrict access to the information/documents to safeguard:

- (a) the prevention, investigation, detection and prosecution of criminal offences;
- (b) any important financial or economic interest of the Member States or the Union;
- (c) the protection of the data subject or the rights of freedoms of others, *including whistleblowers, informants or witnesses;*
- (d) the national security, public security or defence of the Member States;
- (e) the monitoring, inspection or regulatory task connected with the exercise of official authority in cases referred to in (a) and (b).

In that case the staff member will be informed of the principal reasons for applying such restrictions. Any restrictions shall be applied strictly and balanced with the right of defence. Especially the

identity of whistleblowers shall be kept confidential as far as this does not contravene national rules regarding judicial proceedings.

Common steps for the exercise of the above mentioned rights: Any request from a data subject concerning the rights above described should be addressed to the Controller through the following contact e-mail address: Resources-Controller@f4e.europa.eu

Apart from the right to obtain the rectification of inaccurate and incomplete data without delay, the Controller shall provide an answer to the data subject concerning his/her request on the exercise of his/her rights, as defined above, within 10 working days. Any contestation by the data subject to the Controller's reply shall be submitted within 10 working days of the response received and the Controller shall have another 10 working days to provide a replica revising his previous decision or confirming it.

The data subject may put in place the procedure established in article 90 of the Staff Regulations to contest any action of the data controller related to his/her rights.

All data subjects have also right of recourse at any time to the European Data Protection Supervisor: EDPS@edps.europa.eu. The EDPS receives complaints from EU staff members as well as from other people who feel that their personal data have been mishandled by a European institution or body. If a complaint is admissible, the EDPS usually carries out an inquiry. The findings are communicated to the complainant, and necessary measures are adopted.

9/ AUTOMATED / MANUAL PROCESSING OPERATION - STORAGE MEDIA - MEASURES TO ENSURE SECURITY OF PROCESSING

(together with point 10 and 18)

10/ STORAGE MEDIA OF DATA

See under point 9

11/ LEGAL BASIS AND LAWFULNESS OF THE PROCESSING OPERATION

(i) Legal Basis

Council Decision of 27 March 2007 establishing the European Joint Undertaking for ITER and the Development of Fusion Energy and conferring advantages upon it - 2007/198/Euratom, as last amended by Council Decision of 10th February (2015/224 Euratom)⁵, in particular Article 6 thereof;

⁵ Council Decision 2015/224 of 10th February 2015, OJ L 37, 13.2.2015, p 8.

Statutes annexed to the Council Decision (Euratom) No 198/2007 establishing the European Joint Undertaking for ITER and the Development of Fusion Energy and conferring advantages upon it, as last amended on 10th February 2015, in particular Article 10 thereof;

Staff Regulations of Officials (SR) and the Conditions of Employment of Other Servants of the European Communities (CEOS) in particular Article 22(a), (b) and (c) of the Staff Regulations regarding whistleblowing.

Fusion for Energy (F4E), Anti-Fraud Strategy, see in particular its Action Plan, Governing Board Decision of 9th June 2015, F4E(15)-GB 32-15:
[\[http://fusionforenergy.europa.eu/downloads/aboutf4e/meetings/F4E\(15\)-GB32-15-F4E_%20Anti-Fraud_Strategy.pdf\]](http://fusionforenergy.europa.eu/downloads/aboutf4e/meetings/F4E(15)-GB32-15-F4E_%20Anti-Fraud_Strategy.pdf)

Fusion for Energy (F4E), F4E rules concerning disclosure in the public interest (Whistleblowing), Decision of the Director of 6th November 2015, F4E_D_3WNYGU, see ANNEX II

(ii) Lawfulness: Personal data may be processed only if:
(please tick as appropriate)

Processing is necessary for the performance of F4E tasks on the basis of the F4E founding instrument or other legal instrument adopted on the basis thereof or in the legitimate exercise of official authority vested in F4E or in a third party to whom the data are disclosed (Regulation (EC) 45/2001, Article 5(a)), or

Processing is necessary for compliance with a legal obligation to which the controller is subject (Regulation (EC) 45/2001, Article 5(b)), or

Processing is necessary for the performance of a contract to which the data subject is party or in order to take steps at the request of the data subject prior to entering into a contract (Regulation 45/2001, Article 5(c)), or

The data subject has unambiguously given his or her consent (Regulation 45/2001, Article 5(d)), or

Processing is necessary in order to protect the vital interests of the data subject (Regulation 45/2001, Article 5(e)).

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

The general rule is: **ONLY strict need to know principle⁶**, thus if it is necessary for examining the particular whistleblower case. The recipient(s) in particular depend(s) on the respective reporting channel chosen by the whistleblower, according to Art. 3 F4E Whistleblowing Rules, as well as whether he/she seeks prior guidance.

e.g.⁷

⁶ As also enshrined in F4E's "Information Security Policy".

⁷ Notwithstanding the information rights as regards to the whistleblower him/herself according to Art. 6 of the F4E Whistleblowing Rules.

- Director (always) and person(s) he authorises to assist him in examining the whistleblowing report (Art.3)
- Head of Administration
- Line manager (hierarchical superior)
- OLAF/Ethics Officer
- Head of HR Unit
- HR Unit (responsible person, if needed)
- Specialised member of Staff Committee (if prior guidance asked)
- Internal F4E Auditor
-
- OLAF
- Internal Auditor and Court of Auditors (for audit purpose only)
- European Ombudsman (upon justified request)
- Court of Justice (if relevant)

In accordance with Article 7(1) of EC Regulation 45/2001, F4E verifies both that the recipients are competent and that the personal information is necessary for the performance of the related tasks.

Since the personal information transferred could indirectly lead to the identification of suspected persons, F4E verifies on a case by case basis whether it is necessary for the legitimate performance of tasks covered by the competence of the recipient.

Once an administrative inquiry is opened, the provisions from that procedure will apply (see also F4E's prior checking notification on this topic, C-2013-0808).

In case data are transferred to the competent national authorities such as a national Court where there is an infringement of national law: if data are transferred at the request of a national authority, it must establish the 'necessity' for the transfer. If, on the other hand, data are transferred on the sole initiative of F4E, it will be for the latter to establish the 'necessity' for the transfer in a reasoned decision.

13/ **RETENTION PERIOD OF (CATEGORIES OF) PERSONAL DATA**

As a general principle personal data must not be kept in a form which permits identification of data subjects for longer than is necessary for which the data are collected and/or further processed.

Files which do **not lead to the opening of an administrative inquiry**, i.e. which relate to alerts found to be unsubstantiated by F4E, should be deleted without delay from the date on which the F4E decides to close the file without follow up and at the latest two months after such decision.

Files on the basis of which an administrative inquiry or disciplinary procedure are opened are kept in line with the retention periods foreseen for those files in the respective procedures.⁸

⁸ reference is made in particular to the F4E notification on administrative inquiries C-2013-0808.

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

The Controller shall execute any request for blocking or erasure as soon as possible and in any case not later than within 10 working days from the day the data subject's request reached F4E.

He/she will notify this circumstance to the data subject by the same means of communications that the data subject chose to address him.

In the case the data subject contests the accuracy of his/her data, the relevant data are blocked for a period necessary for verifying the accuracy and completeness of the data.

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

14/ HISTORICAL, STATISTICAL OR SCIENTIFIC PURPOSES

If you store data for longer periods than mentioned above, please specify, if applicable, why the data must be kept under a form which permits identification.

F4E may retain anonymous data for statistical purposes, avoiding any indirect identification.

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

none

16/ THE PROCESSING OPERATION IS LIKELY TO PRESENT A SPECIFIC RISK TO THE RIGHTS AND FREEDOMS OF THE DATA SUBJECTS, WHICH JUSTIFIES PRIOR CHECKING BY THE EDPS

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, including, his or her ability, efficiency and conduct;

↑ **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 of Article 27.1, i.e. if the processing operation is likely to present a specific risk to the rights and freedoms of the data subject by virtue of their nature, their scope or their purposes)

17/ COMMENTS

18/ MEASURES TO ENSURE SECURITY OF PROCESSING⁹ :
(Please check all points of Article 22 of Regulation (EC) 45/2001)

See under point 9 above

PLACE AND DATE: 22ND JANUARY 2016 (DRAFT)

DATA PROTECTION OFFICER: ANGELA BARDENHEWER- RATING

INSTITUTION OR BODY: FUSION FOR ENERGY

ANNEXES:

ANNEX I – Specific Privacy Notice

ANNEX II - Fusion for Energy (F4E) “rules concerning disclosure in the public interest (whistleblowing)”, Decision of the Director of 6th November 2015,

⁹ Not to be published in the EDPS' Register (Art. 27(5) of Regulation (EC) N°: 45/2001)

(ONLY IN CASE OF PRIOR CHECKING BY EDPS: To be filled out in the EDPS' office)

EDPS OPINION

OF DATE:

CASE NUMBER:

(To be filled out in the EDPS' office)

FOLLOW UP *(in case of acting measures to be taken)*