

REGISTER NUMBER: 1399

NOTIFICATION FOR PRIOR CHECKING

Date of submission: 02/09/2016
Case number: 2016-0781
Institution: EEAS
Legal basis: article 27-5 of the regulation CE 45/2001(1)

(1) OJ L 8, 12.01.2001

INFORMATION TO BE GIVEN⁽²⁾

(2) Please attach all necessary backup documents

1/ Name and address of the controller

Controller
European External Action Service (EEAS)

Directorate/Division responsible for managing the personal data processing operation:
EEAS.BA.HR.5, Local Agents Division
Former MDR.C5, Local Agents

At the time of the notification in charge of the management of the processing operation:
Luc Véron
Head of Division, EEAS.BA.HR.5, Local Agents
05/211 Rue de la Loi, Brussels 1040, Belgium
Tel: 25844152

Delegated Contact team/person: Claude Depasquale, EEAS.BA. HR.5

Co-controller
EU Delegation to each specific third country and international organisation

2/ Organisational parts of the institution or body entrusted with the processing of personal data
EEAS BA.HR.5

3/ Name of the processing

Disciplinary measures for local agents in EU delegations

4/ Purpose or purposes of the processing

The purpose of the data processing operation is to manage and follow up the procedure for disciplinary measures with regards to local agents in EU Delegations.

5/ Description of the category or categories of data subjects

Data are processed from the following individuals or group of people:

Local agents in EU Delegations who are involved in a Disciplinary procedure

6/ Description of the data or categories of data (*including, if applicable, special categories of data (article 10) and/or origin of data*)

Data processed are the following:

- I. Personal Data (name, last name, ID, place of employment, period of employment) of the local agent involved in a disciplinary procedure
- II. Details of the charges brought against the local agent (including time, date, place of commission of all relevant acts) and including past experience within the Delegation.

7/ Information to be given to data subjects

A Privacy Statement linked to this Notification contains all information provided to the Data Subject(s).

The aforementioned Privacy Statement is available on the intranet EEASzone: ADMINISTRATION > HUMAN RESOURCES > LOCAL AGENTS: <http://intragate.ec.europa.eu/eeas/eeaszone/?q=node/28123>

Related Information is also available in the EU Delegations' Guide: HUMAN RESOURCES > LOCAL AGENTS: <http://intragate.ec.europa.eu/admcorner/eudelguide/policy.cfm?pid=1665>

8/ Procedures to grant rights of data subjects (*rights of access, to rectify, to block, to erase, to object*)

Data subjects have the right to access their personal data and the right to request a correction of any inaccurate or incomplete personal data, which will be implemented within 10 working days after the request has been deemed legitimate. If the data subject has any queries concerning the processing of his/her personal data, s/he may address them to the data controller at the functional mailbox of the relevant EU Delegation or at LOCAL-AGENTS@eeas.europa.eu

9/ Automated / Manual processing operation

Both

10/ Storage media of data

The decisions of the Disciplinary measures (also the informal measures) must be kept in the personal file of the local agent.

A copy of the decision must be sent to EEAS BA HR 5

Information may be registered in Ares.

11/ Legal basis and lawfulness of the processing operation

Article 19 of the 'Framework Rules laying down the conditions of employment of local staff' establishes three disciplinary measures which may be taken following a duly established failure by a local agent to comply with his/her obligations.

This information is available in the EU Delegations' Guide.

Further legal reference:

Good administrative practices in the framework of the Treaty of Lisbon and the Council Decision of 26 July 2010 establishing the organisation and functioning of the European External Action Service (2010/427/EU) available on http://www.eeas.europa.eu/background/docs/eeas_decision_en.pdf

12/ The recipients or categories of recipient to whom the data might be disclosed

Delegations: Head of Delegation, other person chosen by the Head of Delegation in order to be present in the hearing (Head of Sector, Head of Administration) or to help in the disciplinary process, person assisting (if applicable) the local agent during the hearing

HQ: Head of Division, Head of Sector, other dedicated staff in EEAS BA HR 5, Authority Empowered to Conclude Contracts (AECC), PMO (if disciplinary measures have an impact on pension or salary) OLAF; Audit and Ex Post Control.

13/ retention policy of (categories of) personal data

Data will be retained for 20 years within the meaning of Point 12.4.2 (A) of the CRL Management Schedule (Annex I.) of the *Common Commission-level retention list for European Commission files - first revision* (SEC(2012)/713 http://ec.europa.eu/archival-policy/docs/edomec/2012_713_sec_en.pdf, Ref. Ares(2012)1501883 - 17/12/2012) applied by analogy to investigations with disciplinary consequences.

In case of investigations which do not lead to disciplinary measures, the period will be 5 years for files kept in the EEAS (Point 12.4.2 (B) of the CRL Management Schedule (Annex I.)).

When so provided by the applicable Specific Conditions of Employment, the local agent who has received a warning or reprimand, may, after three years, request the Head of Delegation to delete all references to such disciplinary measure from his/her personal file.

13 a/ time limits for blocking and erasure of the different categories of data

(on justified legitimate request from the data subject)

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

Justified requests are treated within 10 working days after the request will have been deemed legitimate.

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

Data may be transferred to judicial authorities of the host country depending on the circumstances and the local legislation as well as with due regard of the Vienna Convention.

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,

Yes, because during the investigations data relating to offences and criminal convictions can be processed.

Article 27.2.(b)

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

YES. The processing operation intends to evaluate personal aspect in the context of disciplinary measures

Article 27.2.(c)

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

N/A

Article 27.2.(d)

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

Yes, because the preliminary and final decisions on a disciplinary measure may include the exclusion of rights or benefits, or may even result in a termination of the employment contract.

Other (general concept in Article 27.1)

N/A

17/ Comments

I.

It is to be noted that the present data protection notification is a model notification. Model notifications are used when there are similar processing operations in several divisions, directorates, or in this case, in EU Delegations. It means that there will be only one notification covering the same process for all EU Delegations. There is a central management of the present procedure and data processing determined by the relevant division of the EEAS. Therefore, with regard to the personal data processing operation, the data controller is the division in HQ, who is responsible for determining the purpose and the means of the procedure, defined under point 2 of the present data protection notification. Although the data controller for the Model Notification is the organisational entity specified under point 2 of this notification, **each Delegation under the supervision of the Head of Delegation will be the co-controller responsible for processing personal data in compliance with the provisions of Regulation (EC) 45/2001.**

II.

Description of the process

Written warnings and reprimands are decided by the Head of Delegation, following consultation of the EEAS (EEAS BA HR 5 (Division Local Agents)) and, in the case of a Commission local agent, of the home DG according to the procedure detailed below. Dismissals are decided by the Authority Empowered to Conclude Contracts (AECC).

Before a formal disciplinary measure a Delegation can also take informal or precautionary measures.

A. Informal and Precautionary measures

In appropriate cases, before issuing a formal disciplinary measure, the Head of Delegation or the Head of Administration may informally bring a matter of concern to the attention of the local agent(orally or in writing).

A copy of all these informal measures should be kept in the personal file of the local agent. If problems with the local agent escalate at a later stage, these informal measures can be retrieved as evidence of sustained misconduct.

B. Formal disciplinary measures

Formal disciplinary procedures are conducted in line with the Framework Rules and Specific Conditions of Employment to the extent that they do not interfere with the applicable local law on disciplinary measures and dismissals.

The standard procedure usually includes:

1. Notification in Writing: the Head of Delegation informs the local agent in writing of the possibility that a disciplinary measure may be issued. This notification in writing should include the following:

the details of the charge brought against him/her (including time, date, place of commission of all relevant acts);

the place, date and time of a hearing during which the local agent can put his/her case (allowing reasonable time for the local agent to prepare him/herself, e.g. 2 days);

at the hearing the local agent may be assisted by a person of his/her choice.

This Notification in Writing should be transmitted by secure email for information to EEAS BA HR.5 (Division Local Agents) and, in the case of a Commission local agent, also to the home DG.

2. the Hearing: the Head of Delegation may also choose to have other persons present (e.g. Head of Sector or Head of Administration).

The Delegation must be ready to bring evidence, testimony (including by other staff, preferably in written form) and any available written proof of the charges to be made against the local agent. The local agent and/or his representative must be allowed to reply to and counter all charges and evidence brought against him/her.

A detailed written record of the hearing should be drawn up and signed by all those present.

3. the Decision: following the hearing, the Head of Delegation may:

decide that more time or further investigation is required before a final decision;

decide that there are not sufficient grounds for a disciplinary measure;

decide to issue a **written warning** (prior notification must be sent to the EEAS BA HR 5 (Division Local Agents) and, in the case of a Commission local agent, also to the home DG ? this notification must be sent by secure email at least two days prior to the decision to issue a written warning);

decide to issue a **reprimand**, with or without deferral of advancement to a higher step for a year (prior notification must be sent to EEAS BA HR 5 (Division Local Agents) and, in the case of a Commission local agent, also to the home DG ? this notification must be sent by secure email at least two days prior to the decision to issue the reprimand);

decide to recommend the **dismissal** of the local agent. In this case, a Note needs to be sent to the Director of Human Resources of the EEAS justifying the recommendation. A final decision will be taken by the competent EEAS or Commission Authority Empowered to Conclude Contracts (AECC).

The Head of Delegation will notify the local agent in writing of the decision, its legal basis and the reasons for the decision (within the period fixed by local law, if any). This decision must be kept in the personal file of the local agent. A copy of the decision must be sent to the EEAS BA HR 5 (Division Local Agents) and, in the case of a Commission local agent, also to the home DG.

A local agent who has received a warning or reprimand, may, after three years, request the deletion from his personal file of all references to such a disciplinary measure, when so provided by the applicable Specific Conditions of Employment.

PLACE AND DATE: Brussels, 05.08.2016

DATA PROTECTION OFFICER: Emese Savoia-Keletti

INSTITUTION OR BODY: European External Action Service