

REGISTER NUMBER: 1443

NOTIFICATION FOR PRIOR CHECKING

Date of submission: 02/03/2017
Case Number: 2017-0261
Institution: European External Action Service (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⁾

1/ Name and adress of the controller

European External Action Service (EEAS)

Controller

European External Action Service (EEAS)

Directorate/Division responsible for managing the personal data processing operation:

Secretariat General EEAS. SG

Directorate General for Budget and Administration EEAS.BA

In charge of the management of the processing at the time of the notification:

Ms Helga Maria Schmid, Secretary General

Mr Gianmarco Di Vita, Director General

Delegated Contact Entities:

Directorate for Human Resources EEAS.BA.HR

Advisors to the Directors of BA.HR

2/ Organisational parts of the institution or body entrusted with the processing of personal data

- SG

- BA

3/ Name of the processing

Administrative inquiries and disciplinary procedures in the European External Action Service (EEAS)

4/ Purpose or purposes of the processing

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 as well as for the obligation to comply with the Staff Regulations.

Information is gathered and processed to allow the Appointing Authority (AA) or Authority Authorised to Conclude Contracts (AACC) of the EEAS, further referred to as AA 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 framework, processing of personal data is considered lawful.

In this context, the EEAS has concluded a Service Level Agreement (SLA) With DG HR/IDOC which is annexed to the notification (Annex 1). Annex 6 to this SLA describes the services provided by IDOC (Annex 2).

It is further specified that the notification of IDOC DPO-63.9 mentions in point 9 that:

" En vertu d'accords interservices (SLAs), l'IDOC peut, sur mandat, pour conduire des enquêtes, des procédures disciplinaires et disciplinaires pour le compte d'autres institutions et organismes communautaires. Les procédures faisant l'objet de la présente notification s'appliquent dans ce cas aux membres du personnel de ces institutions et organismes en l'absence de procédures spécifiques adoptées par les institutions et organismes communautaires concernés"

Data are gathered and collected both by the EEAS and by IDOC, depending on the stage of the process.

The SLA describes the cases where IDOC does a prior check with OLAF.

The EEAS also has an agreement with OLAF for cases directly referred to the Anti-fraud Office.

5/ Description of the category or categories of data subjects

Data subjects may be the following for

I.

Administrative Inquiries

- * Officials
- * Temporary Agents
- * Contractual Staff
- * National experts and trainees
- * Local Agents
- * Staff posted in Delegations by the Commission subject to an investigation
- * Former officials or agents
- * Other individuals (e.g.: victim, witness, ?) whose data may be processed in the frame of an administrative inquiry.

II.

Disciplinary procedures

- * Officials
- * Temporary Agents
- * Contractual Staff
- * National experts and trainees
- * Local Agents
- * Staff posted in Delegations by the Commission subject to an investigation
- * Former officials or agents
- * Other individuals (e.g.: victim, witness, ?) whose data may be processed in the frame of an administrative inquiry.

N.B. Disciplinary procedures involving Commission staff as concerned individuals will be dealt with by the European Commission. Local agents in the

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

- * Names and personal information relating to facts, action or inaction of individuals under inquiry or concerned individuals in the pre-disciplinary or disciplinary procedures
- * Legal assessment of facts, action or inaction according to the Staff Regulations and other obligations of the concerned individuals
- * Data related to the personal responsibility of the individuals concerned including their financial responsibility (article 22 SR)
- * Information including personal data of concerned individuals relating to offences, criminal convictions or security measures which are likely to be qualified as breach pursuant to SR obligations
- * Information relating to sanctions taken
- * Data mentioned in article 10(1) of Regulation 45/2001 are in principle not collected nor processed unless, in exceptional cases, the data are relevant for the overall understanding of the facts and necessary for the assessment of the individual responsibility of the individual concerned

7/ Information to be given to data subjects

I. Information to the Data Subject by the EEAS

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

The aforementioned Privacy Statement is available on the intranet, EEASzone, under a dedicated sub-section of the Directorate for Human Resources.

II. Involvement of IDOC in the process of providing information to the Data Subject

According to the SLA with the European Commission, it is IDOC, who is in contact with data subjects during the inquiry and is able to provide information to the data subjects about their rights and on the details of the data processing.

* Once the AA decides to open an inquiry and provides the required mandate to IDOC, IDOC takes steps to inform the individual(s) concerned as soon as appropriate.

Therefore, reference should be made to the EC DG HR notification DPO-63.9 relating to "Enquêtes administratives et procédures disciplinaires internes de la Commission européenne"

<http://ec.europa.eu/dpo-register/details.htm?id=41787>

* The individual concerned is informed, at the latest on his/her first hearing by IDOC of his/her rights under regulation 45/2001 by handing a copy of part

VI of the practical guide of IDOC. The privacy statement of IDOC will apply for any activity of IDOC pursuant to the role defined in the SLA.

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 correct any inaccurate or incomplete personal data, as well as to request the removal of their personal data if unlawfully processed according to pre-defined provisions aligned with IDOC activity, which will be implemented within 10 working days once the request has been deemed legitimate.

The aforementioned access rights are granted as follows to the person under investigation, pre-disciplinary or disciplinary procedure as defined in point 12 of the notification of IDOC DPO-63.9

"Au titre des articles 1 et 2 de l'Annexe IX du Statut et de l'article 4(4) de la décision IDOC, la personne concernée a le droit d'exprimer ses commentaires sur les conclusions d'un rapport d'enquête administrative, dans la mesure où celles-ci font état de faits la concernant avant que le rapport d'enquête ne soit finalisé et transmis à l'AIPN/AHCC pour suite appropriée. Le rapport d'enquête fait état de ces commentaires, qui y sont annexés.

Lorsque la procédure disciplinaire est ouverte à la suite d'une enquête simplifiée conduite sous la forme d'un examen des documents portés à la connaissance de l'IDOC, la personne concernée est informée des faits la concernant avant son audition au titre de l'article 3 de l'annexe IX du statut et peut les commenter, les compléter ou les rectifier avant la décision définitive de l'AIPN/AHCC d'ouvrir une procédure disciplinaire ou non.

Lorsque l'AIPN/AHCC décide de l'ouverture d'une procédure disciplinaire (article 3 de l'annexe IX), la personne concernée reçoit un exemplaire de toutes les pièces du dossier la concernant, sous réserve, le cas échéant, de la protection du droit des tiers. Elle peut alors commenter et rectifier, le cas échéant, les données qui seraient inexactes. Elle peut également au cours de la procédure disciplinaire compléter ces données par l'ajout à son dossier de tout

9/ Automated / Manual processing operation

Both. The data are collected through manual means on electronic tools. The data are collected through manual means on electronic tools. As soon as the EEAS decides to refer a case to IDOC, the operations will be dealt with as described in the notification DPO-63.9 as follows: "(1) Evaluation des informations transmises à l'IDOC par les services de la Commission (OLAF, PMO, OIB/OIL, DG HR/Direction Sécurité, autres directions générales), les institutions et les organismes avec lesquels l'IDOC a conclu un accord de services (EEAS, EDPS, agences exécutives), les membres du personnel ou des tiers en vue de déterminer s'il y a lieu de considérer le cas comme un 'non cas', d'ouvrir un dossier d'enquête ou une procédure pré-disciplinaire ;

(2) Recherche d'informations complémentaires auprès des services de la Commission, d'autres institutions ou organismes communautaires, des autorités nationales, des membres du personnel ou des tiers dans le cadre d'une enquête administrative, d'une procédure pré-disciplinaire ou d'une procédure disciplinaire;

(3) Constitution de dossiers destinés à être archivés sur support papier et/ou sur support électronique en ce qui concerne les enquêtes, les procédures pré-disciplinaires et disciplinaires;

(4) constitution et mise à jour de tableaux des cas ouverts et clôturés;

10/ Storage media of data

As soon as the EEAS decides to refer a case to IDOC, contrary to the initial provision as referred in EEAS/DGHR IDOC SLA, processing and storage of data is entirely entrusted to IDOC for reason of homogenous and secured handling.

As mentioned in the privacy statement of IDOC :

" Toutes les données en format électronique (courriels, documents, données téléchargées, etc..) sont stockées sur un drive encrypté dont l'accès est limité aux membres de l'IDOC. Elles sont conservées sur les serveurs de la Commission ; la décision de la Commission C(2006) 3602 du 16 août 2006 relative à la sécurité des systèmes d'information utilisés par les services de la Commission leur est applicable.

Toutes les données en format papier sont conservées dans des locaux sécurisés accessibles aux seuls membres de l'IDOC."

Main guiding provisions

* In particular THE FILE, which may become "the disciplinary file" is kept by IDOC.

* Communication with the EEAS designated recipients is done via ARES under the marking " inquiries and disciplinary procedure"

* The EEAS does not keep printed versions of the file. There is a limited archiving in ARES of the communications with IDOC at the AA's level only accessible

11/ Legal basis and lawfulness of the processing operation

Legal bases at stake are as follows:

* Article 86 and Annex IX of the Staff regulations, Articles 47,49,50,50a and 119 of the CEOS

* European Commission General Implementing Provisions (C(2004)1588 of 28/04/2004) on the conduct of administrative inquiries and disciplinary procedures

adopted by analogy by the EEAS on 22 November 2011 with reference PROC HR(2011)013.

http://intracomm.ec.testa.eu/guide/publications/infoadm/2004/ia04086_en.html

* Service-Level Agreement concerning the collaboration between the EEAS and the EC, DG HR signed on 12/12/2012

Further reference

A Practical Guide on procedures and inquiries, pre-disciplinary and disciplinary proceedings adopted by IDOC is also at the disposal of the individuals concerned.

N.B. It is not a legal basis as such, however it provides the individuals concerned information on the different stages of procedures and describes the rights and obligations of staff in these procedures. Part 6 of the guide has a reference to data protection.

https://myintracomm.ec.testa.eu/hr_admin/en/idoc/Documents/Practical_Guide_Final_EN.pdf

<p>12/ The recipients or categories of recipient to whom the data might be disclosed Recipients of the data include:</p> <ul style="list-style-type: none"> * The Appointing Authority * Support staff of the AA
<p>13/ retention policy of (categories of) personal data Contrary to the initial provision as referred in EEAS/DGHR IDOC SLA, processing and storage of data is entirely entrusted to IDOC for reasons of homogenous and secured handling. This also applies to the retention of the files.</p>
<p>13 a/ time limits for blocking and erasure of the different categories of data (on justified legitimate request from the data subject) <i>(Please, specify the time limits for every category, if applicable)</i></p> <p>Data subjects have the right to access their personal data and the right to correct any inaccurate or incomplete personal data, as well as to request the removal of their personal data if unlawfully processed according to pre-defined provisions aligned with IDOC activity, which will be implemented within 10 working days after the request will have been deemed legitimate.</p>
<p>14/ Historical, statistical or scientific purposes <i>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,</i></p> <p>No data need to be kept under a form which permits identification for longer periods.</p>
<p>15/ Proposed transfers of data to third countries or international organisations</p> <p>N/A</p>
<p>16/ The processing operation presents specific risk which justifies prior checking (<i>please describe</i>):</p> <p>AS FORESEEN IN: Article 27.2.(a) Processing of data relating to health and to suspected offences, offences, criminal convictions or security measures,</p> <p>The inquiries outcome often include data on offences, and criminal convictions. Although the purpose of the processing operation is not to collect data on offences and criminal convictions. Article 27.2.(b) Processing operations intended to evaluate personal aspects relating to the data subject,</p> <p>YES, as the objective of the procedure is to evaluate the conduct of the individual concerned in view of possible sanctioning. Article 27.2.(c) Processing operations allowing linkages not provided for pursuant to national or Community legislation between data processed for different purposes,</p> <p>NO.</p>

Article 27.2.(d)

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

The sanction in a disciplinary procedure may result in limitations or exclusions from financial rights.

Although, the purpose of the processing operation is not directly excluding someone from a right.

Other (general concept in Article 27.1)

NO.

17/ Comments

1. EC Notification

Ref. EC IDOC Notification DPO 63.9

PLACE AND DATE: Brussels, 30 January 2017

DATA PROTECTION OFFICER: Emese Savoia-Keleti DPO ai

INSTITUTION OR BODY: European External Action Service (EEAS)