

(To be filled out in the EDPS' office)

NOTIFICATION FOR PRIOR CHECKING

DATE OF SUBMISSION: 12/04/2017

CASE NUMBER: 2017-0395

INSTITUTION: EC - DG HR

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

INFORMATION TO BE GIVEN²

1/ NAME AND ADDRESS OF THE CONTROLLER

CONTROLLER : TOSTMANN STEFAN

E-MAIL: Stefan.Tostmann@ec.europa.eu

DELEGATE : GLODENYTE AGNE

E-MAIL:

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

THE EUROPEAN COMMISSION

DG HR - DIRECTORATE B.2

3/ NAME AND DESCRIPTION OF THE PROCESSING

NAME: Underperformance management

The aim of underperformance-management process is to identify, deal with and remedy cases of underperformance of the staff in the European Commission in a timely and appropriate fashion. Underperformance is managed at both central and local level and the process can cover both informal and formal stages. The present Notification covers both stages and what follows applies equally to both, unless it is specified otherwise.

¹ OJ L 8, 12.01.2001.

DESCRIPTION OF THE INFORMAL PROCESS

As a result of the informal process, stakeholders obtain recommendations on how to address a specific underperformance situation. The process is organised in stages defined below.

I. Preliminary assessment

1. The process (preliminary assessment stage) is triggered: (i) At the request of a manager (managers) of the person concerned (data subject) or (ii) At the request of the Account Management Centre (AMC) or business correspondent (BC) or (iii) At the initiative of DG HR (B.2, Performance Management Team [PMT]). AMC and BC are kept informed and consulted.
2. The PMT collects the opinions of the manager(s) and the AMC/BC about the alleged underperformance issue. The stakeholders can also share with PMT any material they deem suitable to illustrate the situation, such as examples of correspondence, work accomplished, time-sheets or any other relevant information.
3. Where relevant, the PMT obtains the views of and information from the Central Career Support Service (SCOP), the Medical Service, and/or consults IDOC, as necessary.

II. Opening of the case

1. Where, following the preliminary assessment, the PMT considers that the situation requires closer and systematic follow up, it opens the case.
2. The person concerned is informed about the opening of the case.
3. Whenever possible and opportune, the PMT collects the views of the person concerned who is invited to share them on a voluntary basis.
4. The PMT advises the manager(s) and, as relevant, the AMC/BC, the AIPN/AHCC as to the most appropriate steps to be taken to remedy or resolve the underperformance situation (for example, give more systematic and explicit feedback, document the underperformance situation, set up a support plan, change the tasks of the jobholder concerned, issue a warning, designate a colleague to assist the jobholder, etc). The AMC/BC may assist in the implementation of any measures set up by the manager(s).
5. The PMT regularly monitors the progress of the case and, in so doing, consults the manager(s), the AMC/BC, SCOP, the Medical Service, and IDOC as needed.

III. Closure of the case

The process ends (case is closed) when the manager(s) and the PMT reach an agreement that no further specific follow-up is needed or when the person's service at the Commission ends. The PMT informs the manager(s), the AMC/BC and the person concerned of the closure of the case. Where there have been no developments in the case for 2 years, the case shall be considered automatically closed unless the data controller decides otherwise. In such cases, the person will be informed about the automatic closure.

DESCRIPTION OF THE FORMAL PROCESS

Additional, formal, procedures (as far as established officials are concerned) will be detailed once the Commission Decision implementing Article 51 of the Staff Regulations is adopted (in the pipeline; adoption expected in 2017; Decision will be added to this Notification once adopted). The Decision will establish a number of steps to be followed by managers and by the AIPN in cases of finalisation of an unsatisfactory annual appraisal report or a series of consecutive unsatisfactory reports. That Decision will not modify the informal process as described above.

INFORMATION RELATED TO DATA PROCESSING

The processing operation falls under Article 27(2)b of the Regulation No 45/2001. The data gathered during these processes is stored electronically in a secure drive. The data is accessible only to a

number of staff members of Unit HR.B.2. An electronic file is kept separately for each person. The main events in the life-time of each case can be summarized in an Excel file ('case table') for easier chronological review of the progress of the case. Limited amount of data is also inserted in the 'monitoring table' providing an overview of cases followed up by the PMT. All these files are kept in the same secure drive. No paper files are kept. Managers who are part of the process at hand collect information related to the performance of persons under their own authority in the exercise of their managerial responsibilities. AMCs, BCs collect such information if called upon to assist the manager in performance management or when implementing the recommendations of the PMT. See the attached Guidelines as regards responsibility of managers/AMCs/BCs. The files can be transmitted via secure email exchange or via Ares and can be placed and archived in Ares (with appropriate level of sensitivity and marking). Please note that processing of data in the framework of end-of-probation procedure is notified by a separate notification, DPO-2668.4. However, underperformance management can be necessary before the start of the end-of-probation procedures. This notification is aimed at covering such instances.

4/ PURPOSE OR PURPOSES OF THE PROCESSING, AND PROCESSORS

The processing of personal data in the course of underperformance management process is necessary to identify, deal with and remedy cases of underperformance of staff in the European Commission in a timely and appropriate fashion.

PROCESSORS:

n/a

5/ DESCRIPTION OF THE CATEGORY OR CATEGORIES OF DATA SUBJECTS

Probationer as well as established/confirmed officials, temporary and contract agents of the Commission and its offices whose managers consider that their performance could be improved and request or accept assistance of the PMT.

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

1. Data from Sysper: In particular: name, personnel number, PER ID, affiliation, office address, home address where the person is not in office for any reason (sick leave, parental leave, etc.), function group, grade, year of birth, date of entry into service in the Commission, date of last promotion and advance in step, latest data on mobility; job description, objectives, probationary report, annual appraisal reports, absences, working pattern, time-sheets, contract and any extensions of the contract.

2. Data from personal file: where the contract of the temporary or contract staff member is not registered in Sysper, it will be retrieved from the personal file.

3. Opinions of the manager(s), AMC/BC. Examples of correspondence between manager(s), AMC/BC and the person concerned, examples of work of the person concerned.

4. Opinions of SCOP, the Medical Service in the form of summary, IDOC.

5. Opinions of the data subject.

6. Opinions and recommendations of the PMT. Only basic medical data will be processed, in particular: (i) has the person concerned gone through invalidity proceedings recently; (ii) does the Medical Service think underperformance could be related to health status; (iii) is there a need for medical control of person's absences and the like, (iv) opinion of the control sector of the Medical Service stating whether the person is fit to work, (v) opinion of the Medical Service stating whether the person concerned is able to retrieve mail from the post office and read documents, understand their contents and comment on it. Where the person voluntarily submits for his/her file other medical data (for example, medical certificates), such data will not be retained but will either be forwarded to the Medical Service or destroyed. The PMT will proceed as follows:

1. Acknowledge the receipt of the documents;
2. Inform the person that it will not keep the data concerned and that all copies of it have been forwarded to the Medical Service and/or destroyed.

7/ INFORMATION TO BE GIVEN TO DATA SUBJECTS

Specific Privacy Statement is attached.

8/ PROCEDURES TO GRANT RIGHTS OF DATA SUBJECTS

See the Specific Privacy Statement attached.

9/ AUTOMATED / MANUAL PROCESSING OPERATION

Data is stored in the format in which it is received: email, Word, PDF documents, etc. Case tables and monitoring tables are produced in Excel. Any email correspondence on the case is done by using the SECEN encryption system. The files can be transmitted via Ares or placed and archived in Ares (with appropriate level of sensitivity and marking). All electronic files are kept secured in a secured drive (password-protected access) and are accessible only to HoU of HR.B.2 and a number of staff members of HR.B.2. No paper files are stored. Special categories of data within the meaning of Article 10 of the Regulation No 45/2001 (such as data concerning health) are processed. All stakeholders participating in discussions are bound by Article 17 of the Staff Regulations. Also see the attached under point 3 above Guidelines as regards responsibility of managers/AMCs/BCs.

10/ STORAGE MEDIA OF DATA

The data is stored electronically on a secured drive only accessible to the HoU of HR.B.2 and a number of staff members of HR.B.2. The files can be placed and archived in Ares (with appropriate level of sensitivity and marking). Also see the attached under point 3 above Guidelines as regards responsibility of managers/AMCs/BCs.

11/ LEGAL BASIS AND LAWFULNESS OF THE PROCESSING OPERATION

Articles 34 of the Staff Regulations (probationary period) Article 43 (annual appraisal) Article 44 (consequences of unsatisfactory report) Article 51 of the Staff Regulations (procedure for dealing with professional incompetence) Articles 14 and 84 of the CEOS (probationary period) Articles 15 and 87 of the CEOS (evaluation) Commission Decision on the procedures for dealing with professional incompetence (Decision will be attached once adopted).

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

The recommendations of the PMT will be sent to the manager(s) concerned, AMC/BC, and to the relevant AIPN/AHCC (as applicable).

13/ RETENTION POLICY OF (CATEGORIES OF) PERSONAL DATA

In cases of informal proceedings, the PMT will keep the data on cases which it has followed for a period of 5 years from the date of closing the case. In case of ongoing judicial proceedings, the files will be stored until finalisation of such proceedings. In cases where, pursuant to Article 51 of the Staff Regulations, an AIPN/AHCC decision is taken to downgrade or dismiss the person concerned, the decision will also be encoded in the career in Sysper. Relevant retention periods apply: see in particular Notification DPO-2232, SYSPER – Jobholder Management. According to this Notification, as a general rule, the data is retained until the end of activity in the Commission. However, certain data may be retained beyond that period, if this data relates to remaining rights and obligations. A copy of the decision of the AIPN/AHCC will also be kept in the personal file. In accordance with Article 51(7) of the Staff Regulations, officials who are downgraded on grounds of incompetence may after a period of six years ask for all references to that measure to be deleted from their personal files. Also see the attached under point 3 above Guidelines as regards responsibility of managers/AMCs/BCs.

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

15 working days after justified request to the Head of Unit of HR.B.2.

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
n/a

16/ THE PROCESSING OPERATION PRESENTS SPECIFIC RISK WHICH JUSTIFIES PRIOR CHECKING

Article 27.2.(b) Processing operations intended to evaluate personal aspects relating to the data subject

17/ COMMENTS

Processing will include retrieving data from different Sysper modules, including 'Appraisal and promotion and its submodules including 'Probation', 'Career', 'Time management', persons management, and from the personal file, where necessary (see part 6 above). The relevant parts of notifications concerning Sysper, its particular modules and the personal file are applicable in the context of this notification. Also see the attached under point 3 above Guidelines as regards responsibility of managers/AMCs/BCs.

PLACE AND DATE: BRUXELLES, 11.04.2017

DATA PROTECTION OFFICER: RENAUDIERE PHILIPPE

INSTITUTION OR BODY: THE EUROPEAN COMMISSION