

REGISTER NUMBER: 1407

NOTIFICATION FOR PRIOR CHECKING

Date of submission: 3110/2016

Case number: 2016-0989

Institution: EMCDDA European Monitoring Centre for Drugs and Drug Addiction

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

Mr Dante Storti, Head of Unit, Administration
EMCDDA
Praça Europa, 1 Cais de Sodré
1249-289 Lisboa Portugal

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

All current and old EMCDDA staff members

3/ Name of the processing

The EMCDDA terms and conditions for internal investigations in relation to the prevention of fraud, corruption and illegal activity detrimental to the European Union interests (Administrative enquiries and disciplinary procedures at the EMCDDA).

4/ Purpose or purposes of the processing

The purpose of the processing is exclusively within the scope of the establishment of an administrative inquiry/disciplinary procedure file allowing the EMCDDA appointing authority to determine if a staff member failed to fulfil his/her statutory obligations and, if deemed necessary, to impose a disciplinary action pursuant to the Staff Regulations and its implementing rules.

5/ Description of the category or categories of data subjects

The EMCDDA staff (Officials, Temporary Agents and Contract Agents)

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

The categories of personal data dealt with are the following:

- The behaviour, activities or non-activities of a person under administrative investigation and/or who are object of a disciplinary procedure;
- The legal qualification of such activities or non-activities within the framework of the staff regulations to which the agent concerned is subject;
- The individual responsibility of the person concerned, including financial responsibility ;
- The sanctions imposed on the person concerned (if applicable).

7/ Information to be given to data subjects

Complete information on the rights of the concerned persons is provided via the EMCDDA Web page in a special privacy statement posted in its section on the EMCDDA's Disciplinary section.

The opening of an administrative inquiry is notified to the person concerned. The opening of a disciplinary procedure is notified to the person concerned under the conditions set out in Annex IX of the Staff Regulations and after the person concerned has been heard in accordance with the provisions of this Annex.

If the person concerned is not informed of the opening of an inquiry because of the potential harmful effect this information could cause during the unfolding of the inquiry, the EMCDDA will inform the person concerned immediately after the potential hazard is identified and removed/retained. Pursuant to the relevant provisions of Annex IX of the Staff Regulations, this information can only be removed/retained for the period necessary to safeguard the progress/integrity of the inquiry.

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

According to Article 13 of the Regulation 45/2001, the data subject has the right to obtain his complete 'personal' (i.e. on him/her) disciplinary file and take copies of all documents relevant to the proceedings, including exonerating evidence. The rights of access and rectification may be restricted in terms of Article 20.1 of the Regulation 45/2001, in particular 'where such a restriction constitutes a necessary measure to safeguard the prevention, investigation, detection and prosecution of criminal offences' (point a) or (...) 'the protection of the rights and freedoms of others' (point c)).

Article 14 of the of the Regulation 45/2001 provides the data subject with 'the right to rectify inaccurate or incomplete data'. In order to do so and to ensure completeness of the disciplinary file the concerned person should request the controller in writing (EMCDDA-HR@emcdda.europa.eu) to add his/her comments although the rest of the information will remain unchanged. The concerned staff also have the right to require the Controller to erase data if the processing is unlawful.

9/ Automated / Manual processing operation

10/ Storage media of data

n.a.

11/ Legal basis and lawfulness of the processing operation

Article 86 of the Staff Regulations of officials of the European Communities (Staff Regulations); Articles 49 and 119 of the Conditions of employment of other servants (CEOS); Disciplinary rules, procedures and measures, and rules and procedures for administrative investigations as laid down in Annex IX of the Staff Regulations.

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

Information is accessible to all parties concerned in a disciplinary procedure or administrative enquiry. The full file of the enquiry is submitted to the Director (Appointing and Disciplinary Authority). If a disciplinary procedure takes place the complete file is presented to the members of the Disciplinary Board. All parties concerned have access to the information regarding a case (i.e. the official/s, temporary agent/s and contract staff concerned, the persons in charge of conducting the inquiry, witnesses etc.). Furthermore, HR designated staff dealing with the case to administratively facilitate the handling of the case and, should the Director so decide, the EMCDDA Security Services and the staff of the EMCDDA legal service. Last but not least, any of the supervisory instances of the EMCDDA, namely the ones in charge of external audit.

The final decision only is sent to the HR for inclusion in the personnel file of the staff member concerned. Should the final decision imply a disciplinary measure that has impact on the agents' salary, the decision is communicated to the PMO. Transfer of data to third parties will only take place if it is necessary for the legitimate execution of the third parties' mission/duty towards the resolution of the concrete case.

It may happen that data are transferred to the competent national authorities such as a national Court where there is an infringement of national law. In such instances, Article 8 of the Regulation 45/2001 is applicable.

13/ retention policy of (categories of) personal data

The files with the administrative inquiries and disciplinary procedures can be preserved by the EMCDDA for a maximum period of 20 years from to the closing date of the inquiry or from the date of the disciplinary decision. With regard to retaining the disciplinary decision in the personnel file, Art. 27 of Annex IX of the Staff Regulations stipulates the deadlines for a staff member's request to withdraw any mention of the disciplinary sanction. However, the decisional capacity belongs to the Appointing Authority.

The staff member concerned will be informed, but must be made aware that even when it was decided to withdraw a disciplinary sanction from his/her personnel file following Art. 27 of Annex IX of the Staff Regulations, the file would still be kept by the EMCDDA for a maximum period of 20 years from the closing date of the disciplinary decision.

Disciplinary files kept by the EMCDDA can only be consulted by the staff member concerned or the disciplinary authority.

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)

Erasure and blockage of data will take place immediately after receiving in writing the request from the concerned person. The mentioned request will lead to the finalisation of the informal or formal procedures. The maximum period of blockage of the data is of five (5) years and only the person concerned is authorised to request to unblock the data.

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,

Anonymous data on total number of cases dealt with per year will be kept for statistical purposes, in line with Article 4.1.e. of Regulation 45/2001.

15/ Proposed transfers of data to third countries or international organisations

n.a

16/ The processing operation presents specific risk which justifies prior checking (*please describe*):

The data processing in this case involves data regarding suspected failure by an EMCDDA member of the staff (official, temporary agent or contract agent) or former staff member to comply with his/her obligations under the Staff regulations whether intentionally or through negligence on his/her part and evaluation of aspects of the personality and conduct of staff concerned and, therefore, subject to prior checking upon Article 27.

Article 27.2.(b)

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

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,

n.a.

Other (general concept in Article 27.1)

17/ Comments