

(To be filled out in the EDPS' -office)

REGISTER NUMBER: 1420

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NOTIFICATION FOR PRIOR CHECKING

DATE OF SUBMISSION: 19/12/2016

CASE NUMBER: 2016-1165

INSTITUTION: EIT

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

INFORMATION TO BE GIVEN²

1/ NAME AND ADDRESS OF THE CONTROLLER

EUROPEAN INSTITUTE OF INNOVATION AND TECHNOLOGY (hereafter, EIT)

Infopark, building E – Neumann Janos 1 – 1117 Budapest Hungary

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

Unit: Directorate

Director: EIT Interim Director Mr Martin Kern, Martin.kern@eit.europa.eu

Contact person: Ms Patricia Juanes Burgos, Patricia.juanes@eit.europa.eu

Head of Service and Finance Unit: Mr Jari Ahola. Jari.ahola@eit.europa.eu

3/ NAME OF THE PROCESSING

Administrative inquiries and disciplinary proceedings at the EIT

Description of the processing:

¹ OJ L 8, 12.01.2001.

² **Please attach all necessary backup documents**

Processing of personal data, including personal data of a sensitive nature, in the context of administrative inquiries and disciplinary proceedings carried out at the EIT in compliance with the applicable regulatory framework.

According to Article 86 of the Staff Regulations, the procedure on administrative inquires and disciplinary proceedings involves the following basic steps:

- Decision to open an administrative investigation
- Preventive and precautionary measures (if applicable)
- Appointing and mandate of the person/s conducting the administrative investigation and disciplinary proceedings.

4/ PURPOSE OR PURPOSES OF THE PROCESSING

The main purpose is to put together relevant information into a file in order to enable the appointing authority to determine whether there has been a failure by the staff member working for the EIT, to comply with his/her obligations under the Staff Regulations and, where appropriate, impose a disciplinary penalty in accordance with the Staff Regulations.

5/ DESCRIPTION OF THE CATEGORY OR CATEGORIES OF DATA SUBJECTS

Staff member of the EIT or former staff member investigated: temporary agents, contract agents and seconded national experts and may also include data of whistleblowers, informants or witnesses participating in the procedure.

6/ DESCRIPTION OF THE DATA OR CATEGORIES OF DATA

Any personal data or document necessary in order to determine the existence of suspected offences in the framework of administrative inquiries and disciplinary proceedings in each particular case under investigation, namely:

- name, personal number, and data on the statutory position and conditions of employment, name of witnesses, etc.;
- information on the behaviour, action or inaction of persons under investigation and/or subject to disciplinary procedures:
 - personal information contained in or compiled from a transcript, from minutes, reports of informers, hearing records, witnesses, and investigators;
 - information on the legal qualification of these actions or inactions under the staff regulations and other obligations to which the persons concerned are subject;
 - information on the individual responsibility of the persons concerned, including financial (Article 22 of the Staff Regulations)
- information on the disciplinary penalty imposed where appropriate to those concerned.

If, exceptionally, processing of special categories of data in the meaning of Article 10 (1) were to be regarded this would be done under strict compliance with the conditions established in this regard in Article 10 of the Regulation.

7/ INFORMATION TO BE GIVEN TO DATA SUBJECTS

As soon as an administrative investigation is initiated, the person concerned is officially notified by the appointing authority that the investigation has been opened, provided that information does not hinder the investigation.

It is informed during the investigation of the facts and circumstances involving him/her.

It is also informed by the appointing authority of the conclusion of the investigation and its findings.

The appointing authority shall inform the person concerned of the possible opening of disciplinary proceedings concerning him/her and his decision.

Furthermore, the data subject will be provided with a privacy notice with respect to the processing of his/her data in an administrative procedure or disciplinary proceeding (see Annex 1) including information on the following:

- the identity of the controller;
- the purposes of the processing operation for which the data are intended;
- the recipients or categories of recipients of the data;
- the existence of the right of access to and the right to rectify, the data concerning him or her;
- the legal basis of the processing;
- the grounds for lawfulness;
- the period for which the data are retained.

8/ PROCEDURES TO GRANT RIGHTS OF DATA SUBJECTS

-Right of access and rectification

-In accordance with Article 1 and 2 of Annex IX to the Staff Regulations, the EIT staff member or former staff member investigated has the opportunity to comment on facts which relate to him/her and express an opinion on the report drawn in the framework of an administrative enquiry. The conclusions of the investigation shall make reference to his/her comments. In accordance with Article 13 of Annex IX to the Staff Regulations, the EIT staff member or former staff member investigated has the right to obtain his/her complete personal disciplinary file and take copies of all documents relevant to the proceedings, including exonerating evidences.

-The EIT staff member or former staff member investigated may request the addition of comments or documents to his/her personal disciplinary file and his/she has the right to rectify his/her personal data in order to ensure completeness and accuracy of his/her personal disciplinary file, as for instance decision are made in the progress of the administrative enquiry and/or the disciplinary procedure.

-The above mentioned rights of access and rectification may be restricted within the limits of the possible exemptions set out in Article 20 of Regulation (EC) No 45/2001. In addition, the right of information may be restricted in certain cases in light of Article 20 (1) (a-e) of that regulation. In pursuance with Article 20 (3) of Regulation (EC) No 45/2001, the EIT staff member or former staff member investigated shall be informed of the principal reasons on which the application of the restriction is based and of his/her right to have recourse to the EDPS.

-Witnesses and informants have the right of access and rectification of the records of their hearing. These rights of access and rectification may be restricted in line with the provisions of Article 20 of Regulation (EC) 45/2001. The identity of witnesses and informants shall be kept confidential in as much as this would not contravene national rules regarding judicial proceedings. In pursuance with Article 20 (3) of Regulation No

45/2001, witnesses and informants shall be informed of the principal reasons on which the application of the restriction is based and of their right to have recourse to the EDPS.

-Any request of access or rectification of personal data shall be addressed in writing to the Data Protection Officer of the EIT, EIT-DPO@eit.europa.eu or the EIT, 1/E Neumann Janos utca,1117 Budapest, Hungary, EIT Data Protection Officer. Such requests are handled within 15 working days from the date of submission of the request.

-The data subjects have the right of recourse at any time to the Data Protection Officer of the EIT (EIT-DPO@eit.europa.eu) and to the European Data Protection Supervisor (EDPS@edps.europa.eu) for matters relating to the processing of their personal data.

Exemptions and restrictions as specified in Article 20 of the Regulation apply.

9/ AUTOMATED / MANUAL PROCESSING OPERATION

Both manual and automated, as there is a paper and an electronic version of the files.

10/ STORAGE MEDIA OF DATA

The documents relating to the administrative inquiries and disciplinary procedures in the EIT are stored in close cupboards at the Director's office and the office of the Legal Corporate Officer (as OLAF coordinator).

The electronic (scanned) versions of the documents are stored in encrypted files only accessible to the designated actors involved.

11/ LEGAL BASIS AND LAWFULNESS OF THE PROCESSING OPERATION

Article 5(a) of Regulation 45/2001 ("processing is necessary for the performance of a task carried out in the public interest on the basis of the Treaties establishing the European Communities or other legal instruments adopted on the basis thereof or in the legitimate exercise of official authority vested in the official authority vested in the Community institution or body or in a third party to whom the data are disclosed")

Moreover, the legal basis for the processing are:

- Articles 22 and 86 of the Staff Regulations and Annex IX thereof;
- Articles 49 to 50a and Article 119 of the CEOS;
- Decision of the European Institute of Innovation and Technology (EIT) on the adoption of implementing rules to the Staff Regulations of 17 February 2010 adopting by analogy the Commission decision on general implementing provisions on the conduct of administrative inquiries and disciplinary procedures (articles 2 (3) and 30 of Annex IX (C(2004) 1588 of 28.04.2004)

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

Access to the personal data is given to the following persons:

1) Within the EIT:

The complete disciplinary file is submitted to the Appointing Authority, i.e., EIT Director, and to the disciplinary board in the event where a disciplinary board is opened. The administrative inquiry and/or the disciplinary procedure may also be disclosed to staff members designated/mandated by the EIT Director to carry out the administrative and/or disciplinary proceedings (Head of Finance and Service Unit, Legal Corporate Officer, HR Officer).

Upon completion of the administrative enquiry and/or disciplinary procedure, the final disciplinary decision is transferred to the Head of HR Section, for filing and inclusion in the personal file, where appropriate.

2) Within the Commission and other EU institutions and bodies:

For the purpose of safeguarding the financial interests of the European Union, personal data may be disclosed to the Internal Audit Service of the European Commission (IAS), the European Court of Auditors and the European Anti-Fraud Office (OLAF) upon request and to the extent necessary for official investigation or audit purposes.

Where the disciplinary decision entails financial consequences for the staff member concerned, the final disciplinary decision is forwarded to the PMO (salary processing).

For the purpose of handling review procedures, personal data may be discussed to the European Ombudsman, the European Data Protection Supervisor, the European Court of Justice upon request and to the extent necessary for handling the review procedure.

13/ RETENTION POLICY OF (CATEGORIES OF) PERSONAL DATA

Inquiry file and disciplinary file: Files relating to administrative enquiry and files relating to disciplinary procedure shall be kept for a maximal period of 20 years as from the date the administrative enquiry was closed or as from the date of the final disciplinary decision.

In cases where an administrative enquiry is closed without a disciplinary follow-up, the file shall be kept for a maximum period of 5 years as from the date the administrative enquiry was closed.

Only the final disciplinary decision shall be kept in the personal file of the person concerned taking into account the provisions of Article 27 of Annex IX to the Staff Regulations concerning the request for deletion of such data. The Appointing Authority shall decide whether to grant such request.

In accordance with Article 22 (2) of Annex IX to the Staff Regulations, if the Appointing Authority decides to close the case without imposing any disciplinary penalty, and it informs the person concerned accordingly in writing without delay, there shall not traces of this decision in the personal file unless the person concerned requests so.

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

Refer to retention policy. Such requests are handled within 15 working days from the date of submission of the request.

15/ HISTORICAL, STATISTICAL OR SCIENTIFIC PURPOSES

N/a

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

No

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

AS FORESEEN IN:

-Article 27.2.(a)

Processing of data relating to suspected offences, criminal convictions or security measures;

-Article 27.2.(b)

Processing operations intended to evaluate personal aspects relating to the data subject, including in particular his or her conduct. General concept in article 27.1.

18/ COMMENTS

N/a

PLACE AND DATE: BUDAPEST, 16 DECEMBER 2016

DATA PROTECTION OFFICER: PATRICIA JUANES BURGOS

EUROPEAN INSTITUTE OF INNOVATION AND TECHNOLOGY