



## RECORD OF PERSONAL DATA PROCESSING ACTIVITY

Based on **Article 31 of the Regulation (EU) 2018/1725<sup>1</sup>** on the protection of natural persons with regards to the processing of personal data by the Union Institutions, bodies, offices and agencies and on the free movement of such data, each responsible EISMEA data controller has to maintain a record of the processing activities under his/her responsibility.

**Record No: R-2020-10-02**

**Initial approval by Data Controller:** *see date of Ares stamp*

**Previous Notification (if applicable):** DPO-2014-01

**Update (s) (if applicable):** **February 2024**

### NAME OF THE PROCESSING ACTIVITY

**Administrative Inquiries and Disciplinary proceedings**

### IDENTIFICATION OF THE DATA CONTROLLER

**European Innovation Council and SMEs Executive Agency (EISMEA), B-1049 Brussels, Head of Department C-Compliance, People & Budget, C-HR Sector**

### GROUND FOR THIS RECORD (*select relevant ground*)

- Record of a new type of processing activity of personal data (before its implementation)
- Record of a processing activity of personal data that is already in place (ex-post)
- Change/Amendment/ Update of an already existing previous record (or previous notification to DPO)

### DESCRIPTION OF THE PROCESSING ACTIVITY

As soon as the Agency is informed of or identifies a situation with a possible disciplinary dimension, the available information is forwarded to Directorat-General Human Resources. IDOC of the European Commission for its assessment.

IDOC conducts administrative inquiries, pre-disciplinary, disciplinary and suspension proceedings on behalf of the Agency.

IDOC also takes part in inquiries carried out to assess whether the professional environment of staff member(s) contributed to an occupational disease. IDOC collects and processes personal data in the context of its proceedings.

<sup>1</sup> [Regulation \(EU\) 2018/1725](#) of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295/39 of 21.11.2018).

# 1. INFORMATION ON THE PROCESSING ACTIVITY

## of Administrative Inquiries and Disciplinary proceedings

This processing activity is performed in accordance with **Regulation (EU) No 2018/1725<sup>2</sup>** on the protection of individuals with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data.

### 1.1. The Data Controller is:

European Innovation Council and SMEs Executive Agency (EISMEA), B-1049 Brussels, Belgium, Head of Department C-Compliance, People & Budget, C-HR Sector and can be contacted at [EISMEA-HR-ADMINISTRATION@ec.europa.eu](mailto:EISMEA-HR-ADMINISTRATION@ec.europa.eu).

### 1.2. The following entity(ies) is/are acting as Processor(s):

- Investigation and Disciplinary Office of the European Commission (HR.IDOC) [HR-MAIL-IDOC@ec.europa.eu](mailto:HR-MAIL-IDOC@ec.europa.eu);
- Directorate-General for Informatics (DG DIGIT) [DIGIT-SYSPER2@ec.europa.eu](mailto:DIGIT-SYSPER2@ec.europa.eu);
- External service providers for the deployment of communication services.

### 1.3. The legal basis for the processing based on Article 5(1) of Regulation (EU) 2018/1725:

- (a) the processing is necessary for the **performance of a task carried out in the public interest** or in the exercise of official authority vested in the Union Institution or body<sup>3</sup> laid down in Union law;
- (a2) the processing is necessary for the **management and functioning** of the Union Institutions, bodies or agencies (Recital (22) of Regulation (EU) 2018/1725) laid down in Union law;
- (b) the processing is necessary for **compliance with a legal obligation** to which the controller is subject, which are laid down in Union law<sup>4</sup>;
- (c) the processing is necessary for the **performance of a contract** to which the data subject is party or in order to take steps at the request of the data subject prior to entering into a contract;
- (d) the data subject has given **consent** to the processing of his or her personal data for one or more specific purposes;
- (e) the processing is necessary in order to protect the **vital interests** of the data subject or of another natural person.

### 1.4. The purposes of this processing are to:

- allow the Authority Empowered to Conclude Contracts (AECC) and IDOC, on behalf of the Agency, to evaluate on the basis of information gathered via inquiries if there was a breach by a staff member of his/ her obligations under the Staff Regulations, and
- to issue a disciplinary penalty, if necessary.

The Agency informs IDOC of a situation with a possible disciplinary dimension by forwarding all the available information (including those collected during the pre-inquiry) to HR.IDOC for assessment (see SLA with HR.IDOC). IDOC conducts administrative inquiries, pre-disciplinary, disciplinary and suspension proceedings on behalf of the Agency. IDOC also takes part in inquiries carried out to assess whether the professional environment of staff member(s) contributed to an occupational disease, collects and processes personal data in the context of its proceedings.

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<sup>2</sup> [Regulation \(EU\) 2018/1725](#) of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295/39 of 21.11.2018).

<sup>3</sup> *EISMEA Establishment Act*: Commission Implementing Decision (EU) [2021/173](#) of 12 February 2021 establishing the **European Innovation Council and SMEs Executive Agency** (OJ L 50/9 of 15.2.2021).

<sup>4</sup> [Regulation No 31 \(EEC\), 11 \(EAEC\)](#), laying down the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Economic Community and the European Atomic Energy Community (OJ 45, 14.6.1962, p. 1385).

**1.5. The categories of data subjects** concerned by this processing are:

Agency staff (temporary or contract agent; seconded national experts); intra-muros experts, trainees, interim staff, other persons employed under private law contracts working on the Agency's premises; witnesses; person under investigation, third parties (indicated in the file) and alleged victims (if any); Legal representative or accompanying person of the data subject.

**1.6. The following personal data** are or might be collected:

- . *identification data*: name, surname; place & data of birth, gender nationality; personal identification numbers e.g. personnel number, ISDN number;
- . *contact details*: email, phone (office and private)
- . *information of physical characteristics*: eg image, voice, fingerprints, biometric data
- . *case related information*: eg concerning the data subject's private sphere e.g. external activities, hobbies, sports; concerning the data subject's family;
- . *data relating to individual responsibility* of the person(s) concerned, including financial liability (Art. 22 of the SR which applies by analogy to Agency staff); Data relating to disciplinary measures taken against the person concerned where appropriate; Data relating to suspected offences, committed offences, criminal convictions or security measures; Data related to hearings via the written procedure (i.e. whenever the data subject concerned cannot be heard under the provisions of Annex IX of the SR).
- . *professional data, contracts and career*: category of staff, grade, step, duration of the contract, documents relating to the work of the selection committee Organisation (sector, unit, department), information on salary, allowances and bank accounts;
- . *data used to evaluate personal aspects of the data subject*: ability, efficiency, conduct, behaviour, action or inaction of the person(s) subject to an administrative inquiry and/or a disciplinary proceeding; Data relating to legal qualification of that behaviour, action or inaction having regard to the SR and other obligations incumbent on the person concerned.
- . *sensitive persona data (Art 10 Regulation (EU) 2018/1725)*: depending on the reason or action forming the basis of the investigation and disciplinary action, the Agency may need to process special categories of personal data. e.g. related to racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, and the processing of genetic data, biometric data for the purpose of uniquely identifying a natural person, data concerning health or data concerning a natural person's sex life or sexual orientation.
- . *other data*: eg Social media relating to the investigation and disciplinary action; personal data relating to internet connections and/or the use of email or telephone may be processed (eg by IDOC) in the course of an administrative inquiry and/or disciplinary proceedings. In this case, the data minimisation principle (Article 4.1(c) of the Regulation) will be applied and IDOC processes only appropriate, relevant and not excessive traffic data in relation to the purpose for which they are further processed (investigation purpose). Data concerning allegations / declarations.

The Agency reserves its right to contact the staff member via his/her private phone number and private e-mail address when deemed necessary for the sole purpose of ensuring the effective application of the relevant provisions of the SR and the CEOS. The Controller may envisage anonymous statistical analyses with the purpose of improving the quality of the processes.

The above mentioned personal data are **mandatory** for the purpose(s) outline above.

In addition, **non-mandatory** personal data may be collected which will be disregarded if not relevant for the processing.

**1.7. The recipients** to whom of the personal data will or might be disclosed on a need-to-know basis (the type of recipient may vary according to the type of administrative inquiries and during disciplinary proceedings) are :

Within the Agency:

- The Authority Empowered to Conclude Contracts (AECC), i.e., the Agency Director and Head of Departments;

- The competent Head of Unit and members of the HR team and authorised personnel dealing with administrative inquiries and disciplinary proceedings;
- The Legal Team, Data protection officer and Internal Control Team if needed;

Outside the Agency:

- DG Human Resources and Security (DG HR);
  - Investigations and Disciplinary Office (IDOC);
  - Office for the Administration and Payment of individual Entitlements (PMO); Medical Service of the Commission and Doctor(s) appointed by the Agency or the data subject concerned; Medical Committee;
  - and bodies charged with monitoring or inspection tasks in application of Union or national law (e.g. internal audits, Court of Auditors, European Anti-fraud Office (OLAF), law enforcement bodies); European Data Protection Supervisor (EDPS)); European Ombudsman; Financial Irregularities Panel (PIF); The Court of Justice of the European Union (Court of Justice, the General Court of the European Union); Competent authorities of the Member States. Transfers to competent national authorities such as a National Court may occur where there is an infringement of national law and if such a transfer is necessary for the performance of a task carried out in the public interest or subject to the exercise of public authority of the national authorities.
  - Financial Irregularities Panel: where the facts identified lead to a suspicion of financial irregularities, the conclusions related to the facts are communicated to the specialised Financial Irregularities Panel (Articles 66(8) and 73(6) of the EU Financial Regulation).
  - The Disciplinary Board, depending on the constitution of the Board, it will comprise of current staff of the Agency and staff/seconded officials from other Agencies who are appointed to the Board. It will also include any former staff members on the Board in the role of Chair/Vice-Chair.
- Any recipient of the data shall be reminded of their obligation not to use the data received for other purposes than the one for which they were transmitted.

**1.8. Personal data will not be transferred to third countries or international organisations.**

**1.9. The processing of this personal data will not include** automated decision-making (such as profiling).

**1.10. The following technical and organisational security measures** are in place to safeguard the processing of this personal data: Organisational measures include restricting access to the personal data solely to authorised persons of the Agency with legitimate need to know for the purposes of this processing operation; all personal data in electronic format (e-mails, documents, databases, uploaded batches of data, etc.) that are processed during this processing activity are stored on Agency/Commission servers, which are subject to the European Commission's security decisions.

Technical measures include appropriate actions to address online security, risk of data loss/theft/breach, alteration of data or unauthorised access, taking into consideration the risk presented by the processing and the nature of the personal data being processed.

The data collected and the documents created by the Agency, which contain personal data are stored in the encrypted case files. All hard copy data are kept in locked cabinets and can only be accessed by authorised staff with the necessary access rights.

Agency staff members apply strict measures to ensure that the personal data are not accessed by unauthorised persons, including the use of encrypted email and printing via presentation of personnel badges. Relevant electronic communications should be sent via SECCEM-encrypted email.

**1.11. The personal data concerned will be kept for the below periods:**

The Agency applies the principles and retention periods indicated in the Common-Level Retention List for European Commission Files by analogy, as detailed below:

**Administrative investigations:** Files containing documents for which a decision has been taken not to launch an administrative investigation are retained for a period of **5 years** before being destroyed.

**Investigations with disciplinary consequences** Files containing the investigation report, instruments of the disciplinary procedure, correspondence with the person(s) concerned, the decision imposing disciplinary measures and any follow-up (appeals) are retained for a period of **15 years** before being transferred to the historical archives for permanent preservation.

**Investigations without disciplinary consequences:** Files containing the investigation report and the documents for which the decision was taken to open a disciplinary procedure are retained for a period of **15 years** before being destroyed or transferred to the historical archives for permanent preservation if the lead department is OLAF.

**Disciplinary procedures:** Files containing documents for which the decision was taken to open a disciplinary procedure, including the instruments of the disciplinary procedure, correspondence with the person(s) concerned, the decision imposing disciplinary measures and any follow-up (appeals) are retained for a period of **20 years** before being destroyed.

**Cooperation in investigations and disciplinary procedures:** Files created by the Agency cooperating with DG HR and OLAF during these investigations and disciplinary procedures are retained for a period of **15 years** by the SG and **5 years** by the DG/Agency before being destroyed.

Files covering complaints to the administration under Article 90(2) of the SR and requests for assistance under Article 24 and 90(1), as well as complaints or requests under Article 22(c) are retained for a period of **15 years** before being transferred to the historical archive for permanent preservation.

IDOC may require the Agency to process personal data/traffic data relating to internet connections and/or the use of e-mail or telephone in the course of an administrative inquiry and/or disciplinary proceedings. This personal data will be erased by the Agency once the file has been transmitted to IDOC, IDOC may keep the file for a longer period to establish, exercise or defend a right in a legal claim pending before a Court, OLAF and/or the European Ombudsman.

#### **Records in Personal files:**

- In accordance with Article 22(2) of Annex IX of the SR, if the AECC decides to close the case without imposing any disciplinary penalty, and it informs the person concerned accordingly in writing without delay, there shall be **no record** of this decision in the personal file unless upon request of the person concerned.
- Concerning the retention of the disciplinary decision that imposes a penalty/sanction on the staff member concerned, **a copy of the decision** will be kept in the personal file of the jobholder according to Article 27 of Annex IX of the SR that determines the time limits from when the person concerned may request the withdrawal of any mention of the disciplinary measure that figures in the disciplinary file:
  - i. 3 years in case of a written warning or reprimand
  - ii. 6 years in case of any other penalty.The AECC shall decide whether to grant this request.
- Personal data will be kept beyond the time-limits indicated above where they may be required for consultation in the context of **legal or administrative procedures** (for example claims for damages, requests by the Ombudsman, appeals to the Court of Justice etc.) which are still pending when the time-limit expires.

The personal data may be further processed for historical, statistical or scientific purposes as mentioned above and statistical analyses may be kept to improve the quality of the processes and the management of human resources.

#### **1.12. Data Subjects are informed on the processing of their personal data via a data protection notice on their rights :**

- to access their personal data held by a controller;
- to request their personal data held by a controller to be corrected;
- to obtain in some situations erasure of their personal data held by a controller, e.g. when data are

- held unlawfully (right to be forgotten);
- to withdraw consent at any time, without affecting the lawfulness of processing based on consent before its withdrawal;
  - **of recourse** at any time to the **EISMEA Data Protection Officer** at [EISMEA-DPO@ec.europa.eu](mailto:EISMEA-DPO@ec.europa.eu) and to the **European Data Protection Supervisor** at <https://edps.europa.eu>.

**Request from a data subject to exercise a right** will be dealt within **one month**.

Your right to information, access, rectification, erasure, restriction or objection to processing, communication of a personal data breach or confidentiality of electronic communications may be restricted only under certain specific conditions as set out in the **applicable Restriction Decision** in accordance with Article 25 of Regulation (EU) 2018/1725.

Any queries concerning the processing of personal data, have to be addressed to the Data Controller indicated above in 1.1. at [EISMEA-HR-ADMINISTRATION@ec.europa.eu](mailto:EISMEA-HR-ADMINISTRATION@ec.europa.eu).

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