

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

**REGISTER NUMBER: 1155**

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**NOTIFICATION FOR PRIOR CHECKING**

**DATE OF SUBMISSION: 13/09/2013**

**CASE NUMBER: 2013-1012**

**INSTITUTION: EAHC**

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

**INFORMATION TO BE GIVEN<sup>2</sup>**

1/ NAME AND ADDRESS OF THE CONTROLLER

LUC BRIOL, EAHC DIRECTOR  
ADDRESS: 12 RUE GUILLAUME KROLL, LUXEMBOURG  
DROSBACH A3/041, TEL. +352430134450

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

CHRISTIAN PYCKAVET, HR MANAGER  
EAHC ADMINISTRATION UNIT (HR)

3/ NAME OF THE PROCESSING

CONDUCT OF ADMINISTRATIVE INQUIRIES (ANNEX IX OF THE SR), OTHER INQUIRIES (ART.24, 73 AND 90 OF THE SR) AND DISCIPLINARY PROCEEDINGS IN EAHC.

4/ PURPOSE OR PURPOSES OF THE PROCESSING

The human resources sector of EAHC (hereinafter referred to as " EAHC HR ") defines, coordinates and ensures implementation of human resources policies (covering the implementation of the

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<sup>1</sup> OJ L 8, 12.01.2001.

<sup>2</sup> **Please attach all necessary backup documents**

procedures for general administrative inquiries, other inquiries and disciplinary proceedings) within the Agency, on the basis of the relevant provisions of the Staff Regulations (SR) and the Conditions of Employment of Other Servants of the European Communities (CEOS).

The processing of personal data in the framework of general administrative inquiries and disciplinary proceedings is based on a task to be performed in the public interest as provided for in the SR and CEOS and is considered necessary in order to comply with the Staff Regulations. As such, the processing operations are necessary in order to comply with a legal obligation to which the data controller is subject to.

#### **A. Administrative inquiries and disciplinary proceedings under Annex IX of the Staff Regulations.**

Information will be gathered to allow the (AECC) of the Agency to establish facts and determine if the staff member concerned has failed to comply with his/her obligations under the Staff Regulations, decide whether to launch a disciplinary procedure and, finally, impose a disciplinary penalty.

The aim of administrative inquiries under Annex IX of the SR is to explore a situation likely to implicate data subject's personal responsibility and the necessity to initiate disciplinary proceedings and impose disciplinary penalties.

In this context, EAHC has concluded a Service Level Agreement (SLA) with DG HR/IDOC. ("Service Level Agreement concerning the collaboration between the Directorate-General for Human Resources and Security of the European Commission (DG HR) and the Executive Agency for Health and Consumers (EAHC)"; the SLA refers to the services to be provided by IDOC in case the AECC of EAHC decides to launch an (administrative under Annex IX of the SR) inquiry and/or disciplinary proceeding Annex II).

#### **B. Inquiries following a request under Art. 24 of the Staff Regulations**

Information will be gathered to allow the AECC of the Agency to determine if a staff member is entitled to receive assistance from the Agency according to the provisions of Art.24 of the Staff Regulations applicable to contract and temporary staff. The aim of an article 24 inquiry is to establish the facts on the basis of which the Agency will be able to make an informed decision on a request for assistance under Art. 24 of the SR. The inquiry is not intended to determine any individual responsibility. Inquiries held following a request under Art. 24 of the Staff Regulations will be conducted by the Agency.

#### **C. Inquiries following a request under Art. 73 of the Staff Regulations**

Information will be gathered to allow the AECC of the Agency to determine if a staff member is entitled to benefit from the insurance against the risk of accident and/or occupational disease according to the provisions of the common rules on the insurance of officials of the European Communities against the risk of accident and of occupational disease applicable by analogy to contract staff and temporary staff (Common rules on the insurance of officials of the European Communities against the risk of accident and occupational disease- Annex III).

The aim of the inquiry is to obtain all the information necessary to determine e.g. the nature of a disease, whether it has resulted from the insured party's occupation and also the circumstances in which it has arisen. Such inquiry may also be held in the case of an insured party who contracts a disease or sustains injuries by exposure, in the performance of his/her duties, to noxious substances or to exceptional factors causing disease. The inquiry is not intended to determine any individual

responsibility. Inquiries held following a request under Art. 73 of the Staff Regulations will be conducted by the Agency.

#### **D. Inquiries following a complaint under Art. 90 of the Staff Regulations**

Information will be gathered to allow the AECC of the Agency to determine if a decision taken by the AECC of the Agency affecting a staff member is legitimate on the basis of Art.90 of the Staff Regulations applicable to contract and temporary staff.

The aim of an inquiry under art. 90 is to establish the facts on the basis of which the Agency will be able to make an informed decision on a complaint under Art.90 par 2 of the Staff Regulations. The inquiry is not intended to determine any individual responsibility.

Inquiries held following a complaint under Art. 90 par. 2 of the Staff Regulations will be conducted by the Agency.

#### **E. Disciplinary proceedings**

Disciplinary proceedings may be launched by the AECC of the Agency against the data subject concerned on the basis of an investigation report in order to determine if and which disciplinary penalty should be imposed on the data subject concerned.

In case of disciplinary proceedings, the purpose of the processing operation intends:

By DG HR/IDOC: to represent the AECC of the Agency in front of the disciplinary board on the basis of the provisions included in the relevant SLA signed between the Agency and DG HR/IDOC.

- By the Agency's Disciplinary Board: to examine the facts brought in front of its members, gather and evaluate relevant evidence, establish facts and issue a reasoned opinion to the AECC of the Agency on the appropriate disciplinary penalty (if any).

- By the AECC of the Agency: to determine, following the opinion of the Agency's Disciplinary Board, which disciplinary penalty, if any, should be imposed on the data subject concerned.

#### 5/ DESCRIPTION OF THE CATEGORY OR CATEGORIES OF DATA SUBJECTS

The data subjects may be permanent staff, temporary agents, contract agents, national experts and trainees who may be subject to an investigation carried out by the Agency but also any other person (e.g. victim, witness, whistle-blower) whose data may be processed in the frame of an (administrative) inquiry or disciplinary proceeding.

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

Standard identification data will be processed including name, nationality, date of birth, sex as well as data relating to the employment status, position, function group, staff number, previous career development reports (the last one at the time and for the procedure provided for in the applicable rules).

Depending on the type of the administrative inquiry, certain special categories of data might be processed provided that an exception included in Article 10 (2), (4) or (5) of Regulation (EC) 45/2001 applies; the same goes in case of disciplinary proceedings in front of the Agency's Disciplinary Board. A detailed table regrouping the categories of data that are likely to be processed is annexed to the notification ("**Description of the data or categories of data**" - **Annex IV**). As far as special categories of data are concerned the AECC (data controller) will ensure that

theresponsible investigators or members of the Disciplinary Board are made aware of the restrictive rules that apply to the processing of these special categories of data.

**Traffic data:** In case the AECC considers necessary to process data that relate to Internet connections, the e-mail or the telephone use within the context of an administrative inquiry or disciplinary proceeding, it will do so with due observance of the provisions of the articles 20 and 37 of Regulation 45/2001; The AECC may decide, on a case by case basis, to restrict the application of art. 37(1) in order to safeguard the prevention, investigation, detection and prosecution of criminal offences or protect the rights and freedoms of others. This exemption may apply, on a case by case basis, and only if the processing of the traffic data are necessary in the context of the conduct of an administrative inquiry or disciplinary proceeding.

In cases traffic data are processed for telecommunications budget and traffic management purposes including the verification of authorised use of telecommunications system data may be kept for a period longer than six months or even a longer period in order to establish, exercise or defend a right in a legal claim pending before the court.

**Confidentiality of communications:** The AECC is aware of his/her obligation to ensure the confidentiality of communications (telecommunications networks or terminal equipment) as provided for in article 36 of Reg. 45/2001; In case the AECC considers that it is necessary to gain access to data related to electronic communications in the course of an administrative inquiry or disciplinary proceeding (and only on a case by case basis) the four criteria mentioned in the respective EDPS guidelines, namely the lawfulness, necessity, proportionality and choice of the less intrusive means of investigation will be observed.

Finally, it might be possible that the AECC (including IDOC for disciplinary administrative inquiries under Annex IX of the SR and disciplinary proceedings and the Agency's Disciplinary Board in case of disciplinary proceedings involving the Agency's Disciplinary Board) may process data that cannot be identified at the stage of the prior checking and that can vary according to the purpose of the case being dealt with. The Agency (including IDOC for administrative inquiries under Annex IX of the SR and disciplinary proceedings and the Agency Disciplinary Board in case of disciplinary proceedings involving the Agency Disciplinary Board) will ensure that only necessary and proportionate data will be processed in conformity with (art 4(1) c of Regulation 45/2001) and article 15 of Annex IX of the Staff Regulations.

## 7/ INFORMATION TO BE GIVEN TO DATA SUBJECTS

In order to guarantee fair processing and transparency in respect of the processing operation and having regard to the specific circumstances of the processing operation, the following information will be available in a dedicated part of the EAHC's Intranet:

- A Specific Privacy Statement including information on the elements provided for in article 11 of Regulation 45/2001;
- The EAHC decision adopting Commission Decision C (2004)1588 of 28/04/2004 on the conduct of administrative inquiries and disciplinary proceedings;
- The Memorandum of Understanding ("MoU") between the Executive Agencies setting up a Disciplinary Board within each Executive Agency;
- The EAHC decision adopting by analogy the IDOC's manual;
- The IDOC's manual;
- The common rules on insurance against the risk of accident and occupational disease;

- The service level agreement ("SLA") between the EAHC and DG HR (regarding services provided by IDOC);
- The appointment of the EAHC Disciplinary Board;
- The procedural rules of the EAHC Disciplinary Board;
- All relevant legal basis in relation with administrative inquiries and disciplinary proceedings (link to Staff Regulations and CEOS).

For each of the following operations, the specific privacy statement (SPS) and the following information will be provided to the data subject:

## **A. Administrative inquiries**

### **a. Administrative inquiries under Annex IX of the Staff Regulations:**

As soon as an administrative inquiry suggests that a data subject (employee) is personally involved in an affair, the AECC of the Agency will inform him/her by written notification provided that information does not hinder the inquiry. Otherwise, the staff member will be informed as soon as possible thereafter. The Specific Privacy Statement will be included in the information given to the latter.

The AECC of the Agency will inform the data subject personally concerned when the investigation ends and will communicate to him/her the conclusions of the investigation report and, on request and subject and with due regard of the legitimate interests of third parties, all documents directly related to the allegations made against him/her.

In case a supplementary administrative inquiry will be launched, the up mentioned rules will apply.

### **b. Inquiries following a request under Art.24 of the Staff Regulations:**

Whenever such inquiry is opened, the data subject will be informed by written notification. When such inquiry involves alleged harassment, the persons questioned during the hearings will also be informed of the outcome of the inquiry.

### **c. Inquiries following a request under Art.73 of the Staff Regulations:**

Whenever such inquiry is opened, the data subject will be informed by written notification. The Agency will notify the insured party or those under him/her of the draft decision and of the findings of the doctor appointed by the Agency.

### **d. Inquiries following a complaint under Art.90 of the Staff Regulations:**

Whenever such inquiry has to be opened, the data subject will be informed by written notification. If any, the persons questioned during the hearings will also be informed of the outcome of the inquiry.

## **B. The Mandate (administrative inquiries by IDOC)**

The IDOC (mandatee) is responsible for informing the member(s) of the staff concerned that an administrative inquiry has been opened, provided that information does not hinder the inquiry.

## **C. Hearings during administrative inquiries**

Data subject(s) called to attend a hearing will be notified in writing by the investigation team. Sometimes, the notification may be done simultaneously to that referring to the opening of the administrative inquiries referred in point A.

## **D. Closure of administrative inquiries**

Once the investigation report has been submitted to the AECC of the Agency, the data subject personally concerned will be informed by the AECC of the Agency that the inquiry has been completed and, unless the case is closed without further action, a copy of the conclusions of the report will be sent to him/her.

If the case is closed without further action, the AECC of the Agency will promptly inform in writing

the data subject personally concerned.

In case of admonition issued by the superior of the data subject personally concerned, the latter will be informed in accordance with Art. 26 of the Staff Regulations.

**E. Pre-disciplinary procedure (Art.3 of Annex IX of the Staff Regulations)**

The data subject will be informed of the opening of a pre-disciplinary procedure and will be notified of all evidence in his/her file. After the conduct of a hearing the AECC of the Agency may decide to:

- Close the case; in that case, the data subject will be accordingly informed in writing by the AECC.
- Issue a warning; in that case the AECC of the Agency will address a warning to the data subject personally concerned.
- To initiate disciplinary proceedings provided for in section 4 of Annex IX of the SR or before the Agency's Disciplinary Board; in that case the AECC of the Agency will notify the data subject personally concerned of allegations against him/her and the choice of procedure that will be followed (referral of the case or not to the Agency Disciplinary Board)

**F. Disciplinary proceedings**

**a. With referral to the Agency's Disciplinary Board**

The report submitted to the Agency Disciplinary Board will be also communicated to the data subject personally concerned.

The Agency's Disciplinary Board opinion will be addressed to the data subject. The same rule applies in case a second opinion is required from the Board.

The decision taken by the AECC of the Agency will be communicated in writing to the data subject and will state the grounds on which it is based.

If the AECC of the Agency decides to close the case without imposing any disciplinary penalty, it will inform the data subject in writing without delay.

An original copy of the decision signed by the AECC of the Agency will be given to the data subject. An acknowledgment of receipt of the decision will have to be signed by the data subject personally concerned.

**b. Without referral to the Agency Disciplinary Board (Section 4 of annex IX of the SR)**

The decision taken by the AECC of the Agency will be communicated in writing to the data subject personally concerned and will state the grounds on which it is based.

An original copy of the decision signed by the AECC of the Agency will be given to the data subject. An acknowledgment of receipt of the decision will have to be signed by the data subject.

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, "the data subject shall have the right to obtain without constraint from the controller, communication in an intelligible form of the data undergoing processing and of any available information as to their source" (paragraph c). In addition, Article 14 of the Regulation provides the data subject with a "right to obtain from the controller the rectification of inaccurate or incomplete personal data". These rights may be restricted, on a case-by-case basis, pursuant to Article 20(1) (c) of Regulation 45/2001. "

To exercise his/her right of rectification and its right of access the data subject will have to contact the controller (EAHC Director) via the EAHC HR department by sending an e-mail to the relevant functional mailbox EAHC-HR@ec.europa.eu.

For each processing operation, the data subject shall have the following right of access and/or right of rectification of his/her personal data:

## **A. Administrative inquiries**

### **a. Administrative inquiry under Annex IX of the Staff Regulations**

The final report issued by the investigation team is not meant to be consulted or commented upon by the data subject concerned.

The data subject personally concerned will be given the right to comment on facts concerning him/her before the investigation team proceeds to any drawn conclusions referring to him/her by name, including the case where the "Financial Irregularities Panel" is of the opinion that the data subject personally concerned has committed irregularity. The conclusions of the report issued by the investigation team will make reference to any comments made by the data subject personally concerned.

This consultation phase will apply only to the part of the conclusions containing all the facts relating to the data subject under investigation.

In practice, the data subject will be sent a summary of the facts relating to him/her and will be allowed 10 working days to agree with the summary. This period may be extended if the data subject is employed or lives abroad.

In sensitive cases (e.g. requiring the use of investigative procedures falling within the remit of a national judicial authority), compliance with the obligation to invite the data subject to comment, may, in agreement with the AECC of the Agency, be deferred. In such cases, no disciplinary proceedings will be opened before the data subject has been given a chance to comment.

Starting from the day after the data subject exercises his/her right of access to the facts concerning him/her, he/she will have a further period of 10 working days within which to make any comments.

#### **Remark:**

If several data subjects exercise their right of access to the facts concerning them and one of them makes comments or observations, substantiated if necessary by supporting documents, disclosing new information concerning one or more of the other persons, those data subjects will be offered the possibility of another consultation in relation to the new information.

The AECC of the Agency will inform the data subject personally concerned when the investigation ends and will communicate the conclusions of the investigation report and, on request and subject to the legitimate interests of third parties, all documents directly related to the allegations made against him/her.

If a supplementary administrative inquiry has to be launched, the same rules above will apply.

### **b. Inquiry following a request under Art.24 of the Staff Regulations**

The final report is not meant to be consulted or commented upon by the data subject concerned.

However, the originator of the request will be given the opportunity to ask the summary of the report. As the requesting party will not be given access to the inquiry report, this summary will be his/her only means of accessing the outcome of the inquiry.

### **c. Inquiry following a request under Art.73 of the Staff Regulations**

The final report is not meant to be consulted or commented upon by the data subject concerned. Data subjects making a request under art. 73 may have access to the inquiry report, following the procedure provided for in Art. 20 of the common rules on insurance against the risk of accident and occupational disease:

- The insured party or those entitled will be given the opportunity to request that the full medical report is communicated to them or to a doctor chosen by them.

### **d. Inquiry following a complaint under Art.90 of the Staff Regulations**

The final report is not meant to be consulted or commented upon by the data subject concerned. However, the originator of the complaint will be given the opportunity to ask the summary of the report. As the requester will not be given access to the inquiry report, this summary will be his/her only means of accessing the outcome of the inquiry.

If the Financial Irregularities Panel (PIF) is consulted, opinions of the PIF will be disclosed to the data subject directly concerned.

## **B. Hearings during administrative inquiries**

The language of the hearings will be mentioned in the notification and will be determined in a way so as to ensure the data subject concerned, has effective access to the administrative acts that concern him/her individually. A copy of the record of the hearing will be sent to all those present at the hearing.

## **C. End of administrative inquiries**

Once the AECC of the Agency has forwarded a copy of the conclusions of the report to the data subject personally concerned, upon request he/she will have access to all documents directly linked to the allegations made, subject to the protection of the legitimate interests of third parties.

Where several different data subjects are concerned by the administrative inquiry, their right of access will not cover the conclusions in their entirety but only the part where facts are reported and that relate to each of them individually.

In the event of closing the case without further action, the data subject personally concerned may ask the AECC of the Agency that the decision is inserted in his/her personal file.

## **D. Pre-disciplinary procedure (Art.3 of Annex IX of the Staff Regulations)**

Prior to the possible initiation of disciplinary proceedings, the data subject personally concerned will have the right to be apprised of all evidence in the files and to be heard by the AECC of the Agency. In the case of a hearing, the record of the hearing of the data subject personally concerned will be submitted to him/her for signature. He/she will also be given the right to have, upon request, a copy of the records of the hearings of third parties provided that they constitute evidence for or against. After the completion of this phase, the AECC of the Agency may decide to:

-close the case;

-issue a warning: the warning will be entered in the data subject's personal file. He/she will be given the right to request the withdrawal of the warning from his/her personal file 18 months after its adoption;

-initiate disciplinary proceedings involving or not the Agency's Disciplinary Board;

## **E. Disciplinary proceedings**

### **a. With referral to the Agency Disciplinary Board**

The report submitted to the Agency's Disciplinary Board will be communicated to the data subject personally concerned.

Upon receipt of the report, the data subject will be given the right to obtain his/her complete personal disciplinary file and take copies of all documents relevant to the proceedings, including aggravating and exonerating evidence.

In case the appointing authority decides to close the case without imposing any disciplinary penalty, the data subject will be given the opportunity to request that the decision taken by the AECC of the Agency is inserted in his/her personal file. He/she will also be given the right to request that the damage suffered is made good through suitable publicity for the decision of the AECC of the Agency.

Both the decision imposing a penalty and the acknowledgment of receipt will be inserted in the data subject's personal file.

The data subject will be reminded of his/her right to request the deletion from his/her personal file of the disciplinary decision following:

- 3 years from the imposition of written warning/ reprimand
- 6 years from the imposition of any penalty other than removal from the post

However the AECC will decide whether or not to accept this request and will provide justification in case of rejection of the request.

Deletion of the penalty from the personal file will be without prejudice to the application of Art.10 (h) and (i) of Annex IX of the Staff Regulations in the event of new disciplinary proceedings against the same data subject.

The timeframe for deletion will begin from the date the decision imposing the penalty was adopted.

#### **b. Without referral to the Agency's Disciplinary Board**

The same rules referred in the afore-mentioned section will apply with the exception of the rules specific to the procedure that involves the Agency's Disciplinary Board.

#### 9/ AUTOMATED / MANUAL PROCESSING OPERATION

For the description of the procedure, please refer to point 5.1 of the present notification.

The organisation and conduct of administrative/ disciplinary proceedings will require the use of both manual (handwriting) and electronic (e-mails, photocopies, use of ARES, other electronic storage databases) means of communication between the parties involved; Documents prepared/ received/ used throughout the procedure will be stored both in paper and electronic files.

#### 10/ STORAGE MEDIA OF DATA

Documents produced/ received within the context of the notified operations will be stored in both paper and electronic files; the paper disciplinary file will include all the documents that have been used, received or produced throughout the procedure; e-mails or other numerical documents will be stored in a devoted part of the Agency's shared drive. In specific:

- **Electronic format storage**

The paper documents referred to above will be stored in the Agency's shared drive (to which access is restricted to parties involved) and in the Advanced Record System "ARES".

- **Paper files storage**

Once a disciplinary file will be created, it will be stored in the HR archive room (locked) where the personal files of the Agency's staff are stored.

Once an administrative or other type of inquiry file is initiated, it will be stored in the HR archive room (locked) where the personal files of the Agency's staff are stored.

11/ LEGAL BASIS AND LAWFULNESS OF THE PROCESSING OPERATION

Article 86 and Annex IX of the Staff Regulations; Articles 11, 28, 49, 50, 81, 95, 119 and 124 of the Conditions of Employment of Other Servants;

- Commission Decision C (2004)1588 of 28/04/2004 on the conduct of administrative inquiries and disciplinary procedures which has been adopted by the EAHC Steering Committee with its decision SC (2005)10/3/4 of 21.12.2005;
- Articles 24, 26, 73 and 90 of the Staff Regulations 11,28,81,95, 124 of the CEOS;
- The common rules on the insurance of officials of the European Communities against the risk of accident and occupational disease (relevant to art. 73 of the SR); Article 4 of the Service Level Agreement signed between the Agency and the Office for Administration and payment of Individual Entitlements (PMO) providing that PMO will provide services relating to the calculation of entitlements under article 73 of the SR.
- The Memorandum of Understanding ("MoU") between the executive agencies setting up a Disciplinary Board within each Executive Agency: it will be signed after finalisation of the present EDPS prior notification procedure. The present prior check notification is based on its draft version;
- The EAHC steering committee decision adopting by analogy the Manual of the Investigation and Disciplinary Office (IDOC). The present prior check notification is based on its draft version;
- The rules of procedure of the Agency's Disciplinary Board to be adopted by the Board after the finalisation of the present EDPS prior check notification procedure;
- The Service Level Agreement ("SLA") between the EAHC and DG HR describing the services provided by Directorate HR.IDOC (Appendix 4 of the SLA).

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

Data may be disclosed to the following recipients on a need-to-know basis:

- EAHC HR Sector (HR members in charge of the file);
- EAHC Internal Horizontal Services (Legal Service, Internal Audit);
- Director of the Agency in his/her capacity of Authority Empowered to Conclude Contracts (AECC);
- Head of Unit "Administration";
- EAHC Disciplinary Board;
- Directorate-General Human Resources and Security (DG HR);
- Investigations and Disciplinary Office (IDOC);
- Office for the Administration and Payment of individual Entitlements (PMO);
- Medical Service;
- Doctor(s) Appointed by the Agency;
- Doctor(s) appointed by the data subject concerned;
- Medical Committee;
- European Anti-Fraud Office (OLAF);
- European Data Protection Supervisor (EDPS);
- Financial Irregularities Panel (PIF);
- European Court of Auditors (ECA);

- European Ombudsman;
- Civil Service Tribunal;
- General Court of the European Union;
- European Court of Justice;
- Competent national authorities such as a National Court.

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. Regarding third countries which have not implemented a comprehensive data protection framework for judicial activities, application of Article 9 of Regulation (EC) No 45/2001 will be observed by the Agency; the latter will consider the provisions of the Convention 108 of the Council of Europe (Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data) to judicial authorities.

Transfers to financial irregularities panel: where the facts complained lead to 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 Financial Regulation (Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002)}.

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.

The identity of the recipients may vary according to the type of administrative inquiries and during disciplinary proceedings. A detailed table regrouping the different categories of potential recipients ("**Recipients or categories of recipient to whom the data might be disclosed**" - **Annex VII**) has been established in accordance with the categories of personal data processed as detailed in Annex IV.

### 13/ RETENTION POLICY OF (CATEGORIES OF) PERSONAL DATA

Without prejudice to the provisions of article 27 of Annex IX of the SR (deletion of penalty measures from the personal file), disciplinary decisions will be kept beyond the time limits laid down therein so that account may be taken of the provisions relating to repeated misconduct (Article 10(h) and (i) of Annex IX) in any future disciplinary proceedings.

#### **Administrative inquiries files and disciplinary proceedings files:**

- Files in cases where a decision has been taken to open disciplinary proceedings will be kept for 20 years from the date on which the AECC of the Agency decides to close the disciplinary proceedings;
- Files of administrative inquiries closed without disciplinary action being taken will be kept for 5 years from the date on which the AECC of the Agency decides not to take action;
- Other cases falling into the five-year category will include those closed without further action being taken at the end of the phase of Article 3 described in Annex IX of the SR and those where a warning is issued following the phase described in Article 3 of Annex IX of the SR and those where it has not been recommended to open an additional inquiry following positive or negative recommendations by OLAF.

- Files on inquiries undertaken following a request/complaint under Articles 24, 73 and 90 of the Staff Regulations will also be kept for 5 years following the relevant decision of the AECC.
- Files which did not lead to the opening of an inquiry ('non-case') will be kept for a period of 2 years from the date on which the AECC of the Agency decides to close the file without follow-up.

Files will be kept beyond the time-limits indicated above in case they are 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..) which are still pending when the time-limit expires

### **PERSONAL FILES**

Concerning the retention of the disciplinary decision that imposes a charge on the staff member concerned: a copy of the decision will be kept in the personal file of the jobholder. The staff member concerned will be reminded of his/her right provided for in article 27 of Annex IX of the Staff Regulations, indicating the delays as from when it is possible to ask the withdrawal of any mention on the disciplinary measure that figures in the personal file:

- 3 years in case of a written warning or reprimand
- 6 years in case of any other penalty

The AECC should decide whether to grant this request and provide reasons for that.

### **TRAFFIC DATA**

In case of processing of personal 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, personal data will be erased or made anonymous as soon as the specific administrative inquiry and/or disciplinary proceeding is finalised and no longer that the retention period of the disciplinary files, unless they need to be kept 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.

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

- Time limit to rule on a request: 15 working days (beginning from the reception of the request).
- Blocking period: Within 5 working days following the ruling on the request.
- Erasure Period: Maximum delay of 5 working days following the ruling on the request.

#### **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.*

Data (Nationality/gender/category) may be kept for statistical purposes but in a form that does not permit identification.

**A. In case of transfer to recipients other than the EU Institutions and bodies:**

It may occur that personal data are transferred to the competent national authorities such as a National Court where there is an infringement of national law. In such instances, the Agency will apply Article 8 of Regulation (EC) 45/2001 providing that personal data will be transferred to the national authorities subject to the national law adopted for the implementation of Directive 95/46/EC only if those authorities establish that the data are necessary for the performance of a task carried out in the public interest or subject to the exercise of public authority.

When personal data has to be transferred at the request of a national authority, the authority will be requested to justify the necessity for the transfer.

If personal data are transferred on the sole initiative of the Agency, the Agency will justify the necessity of the transfer in a reasoned decision. Regarding the countries which have not implemented a comprehensive data protection framework for judicial activities, application of Article 9 of Regulation (EC) 45//2001 will be considered by the Agency with due consideration of Convention no 108 of the Council of Europe.

**B. In case of transfer to recipients outside the EU:**

In very exceptional circumstances, where there is an infringement of national law, personal data may be transferred to a national authority based outside EU such as a national Court. In that case, the Agency will request those authorities to clearly establish that the requested personal data are necessary for the performance of a task carried out in the public interest or subject to the exercise of public authority and will assess the adequacy of the level of protection afforded by the third country/organisation.

When personal data has to be transferred at the request of a national authority, the authority will be requested to justify the necessity for the transfer.

If personal data has to be transferred on the sole initiative of the Agency, the Agency has to justify in a reasoned decision the necessity of the transfer.

As provided by article 27 of regulation 45/2001:

«1. Processing operations likely to present specific risks to the rights and freedoms of data subjects by virtue of their nature, their scope or their purposes shall be subject to prior checking by the European Data protection Supervisor. 2 The following processing operations are likely to present such risks: a)processing of data relating to health and to suspected offences, offences, criminal convictions or security measures; b) processing operations intended to evaluate personal aspects relating to the data subject, including his or her ability efficiency and conduct,..... (d) processing operations for the purpose of excluding individuals from a right, benefit or contract.»

Both and administrative inquiry and disciplinary procedure encompass elements of the provisions referred to above: processing of data may be related to suspected offences (in case of art. 24 of the SR); evaluation of personal aspects of the data subject such as ability efficiency and conduct (for the decision on severity of disciplinary measures); exclusion from a right benefit or contract (e.g. disciplinary penalties).

Thus, the procedure is subject to prior notification to the EDPS.

17/ COMMENTS Annexes attached to the present notification:

- The EAHC decision adopting by analogy the Manual of the investigation and disciplinary office (IDOC). The notification is based on its draft version (**Annex I**);
- The Service Level Agreement ("SLA") between the EAHC and DG HR describing the services provided by Directorate HR.IDOC (Appendix 4 of the SLA) (**Annex II**);
- The common rules on the insurance of officials of the European Communities against the risk of accident and occupational disease; (**Annex III**);
- The description of the data or categories of data (**Annex IV**);
- The draft rules of procedure of the Disciplinary Board to be adopted by the Board after the finalisation of the present EDPS prior notification procedure (**Annex V**);
- The Memorandum of Understanding ("MoU") between the executive agencies setting up a Disciplinary Board within each executive agency: it will be signed after finalisation of the present EDPS prior notification procedure. The notification is based on its draft version (**Annex VI**);
- The recipients or categories of recipients to whom data may be disclosed (**Annex VII**);
- Commission Decision C (2004)1588 of 28/04/2004 on the conduct of administrative inquiries and disciplinary procedures which has been adopted by the EAHC Steering Committee with its decision SC (2005)10/3/4 of 21.12.2005 (**Annex VIII**);
- The specific privacy statement.

PLACE AND DATE:

DATA PROTECTION OFFICER:

INSTITUTION OR BODY: