

PRIVACY STATEMENT FOR AN ADMINISTRATIVE ENQUIRY AND/OR A DISCIPLINARY PROCEDURE

This privacy statement provides information relating to the processing of personal data by the European Institute of Innovation and Technology (EIT) when managing the data relating to the administrative inquiry and/or a disciplinary procedure. The processing of personal data of the data subjects follows the provisions of Regulation (EC) No 45/2001 on the protection of personal data by the European Union's institutions and bodies.

What is personal data and what is a personal data processing operation?

Personal data shall mean any information relating to an identified or identifiable natural person ('data subject'). An identifiable person is one who can be identified, directly or indirectly, in particular by reference to an identification number or to one or more factors specific to his or her physical, physiological, mental, economic, cultural or social identity.

Personal data processing operations can be any operation or set of operations which is performed upon personal data, whether or not by automatic means, such as collection, recording, organisation, storage, adaptation or alteration, retrieval, consultations, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, blocking, erasure or destruction.

Who is the controller of the data collection?

Head of Services and Finance Unit: Mr Tzvetan Zafirov

Description of the personal data processing operation

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

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

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

What is the purpose of the personal data collection?

The management and administration of *administrative enquiries*, opened at the request of the Appointing Authority, in view of establishing the facts and, where appropriate, to determine whether there has been a failure to comply with the obligations incumbent on EIT staff members. This implies the constitution of disciplinary files (paper and electronic files), and lists of open and completed cases.

In case the administrative enquiry concludes that the person concerned has failed to comply with his/her obligations under the Staff Regulations, the Appointing Authority may require opening a *disciplinary procedure* and may decide to set up a disciplinary board. In accordance with Annex IX to

the Staff Regulations, the disciplinary board shall give an opinion on the facts complained of and on any penalty these facts should give rise. The deliberations and proceedings of the disciplinary board shall be secret.

Who are the data subjects?

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

What types of personal data are collected?

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, ect;
- 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, 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 person(s) concerned, including financial (Article 22 of the Staff Regulations)
- 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.

Who has access to the personal data (data recipients)?

Persons (internal or external) involved in the administrative inquiries and/or disciplinary procedures shall sign a confidentiality declaration stating that they are subject to an obligation of professional secrecy equivalent to that of a health professional.

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

1) EU institutions and bodies:

- **Within the EIT:** the complete disciplinary file is submitted to the Appointing Authority, i.e. the EIT Director, and to the disciplinary board members in the event where a disciplinary board is set up. 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 Services and Finance Unit, Legal Corporate 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.
- **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), where the disciplinary procedure was triggered by a request from 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 and appeals, 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.

- Third parties subject to national law adopted for the implementation of Directive (EC) 95/46:

Exceptionally and if necessary, information concerning the inquiry and disciplinary procedure may be transferred to external investigators or external lawyers (advocates), subject to Directive (EC) 95/46 for specific and limited purposes only.

In these cases a written contract (following the model of the Commission including a specific article on data protection) is signed between the EIT and the contractor in order to ensure that that Article 23 of the Regulation is respected by the data processor.

- Third parties not subject to Directive (EC) 95/46

Not applicable

What are the rights of the data subjects? Who should be contacted in case of queries or complaints?

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.

What is the legal basis of the processing?

1) General legal basis:

Council Regulation (ECC, Euratom, ECSC) No 259/68 of 29 February 1968 laying down the Staff Regulations of Officials of the European Communities and the Conditions of Employment of other servants of the European Communities (OJ L 56 of 4..1968) and the subsequent regulations and corrigenda amending and correcting that regulations, and in particular, Articles 22 and 86 and Annex IX to the Staff Regulations and Articles 49, 50 and 119 of the CEOS

2) Legal basis specific for EIT:

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)

Grounds for lawfulness:

Processing is necessary for the performance of tasks carried out in the public interest on the basis of the Staff Regulations and the Conditions of employment of other servants of the European Communities (Article 5(a) of Regulation (EC) No 45/2001).

For how long the data is retained?

- **Pre-inquiry file:** Documents relating to the preliminary assessment of the information collected shall be kept to a maximum of *2 years* after the adoption of the decision that no inquiry will be launched.
- **Inquiry file:** When the EIT launches an inquiry including the collection of evidence and interviews of individuals, there are three possibilities:
 - i) the inquiry is closed without follow-up,
 - ii) a caution is issued or
 - iii) the Appointing Authority of your institution adopts a formal decision that a disciplinary proceeding should be launched.

For cases i) and ii), the personal data can be retained for a maximum of *5-year-period* from the closure of the investigation, taking into account audit purposes and legal recourses from the affected individuals.

For case iii), the EIT transfers the inquiry file to the disciplinary file, as the disciplinary proceeding is launched on the basis of the evidence collected during the administrative inquiry.

- **Disciplinary file:** in case the EIT carries out a disciplinary proceeding with the assistance of internal and/or external investigators on the basis of a contract, the maximum retention period shall be determined by the Appointing Authority by taking into consideration the nature of the sanction, possible legal recourses as well as audit purposes: this retention period cannot exceed *10 years* after the adoption of the final Decision.

If the staff member submits a request, under Article 27 of Annex IX to the Staff Regulations, for the deletion of a written warning or reprimand (3 years after the Decision) or in the case of another penalty (6 years after the Decision, except for removal from post) and the Appointing Authority grants the request, the disciplinary file which led to the penalty shall also be deleted. If the Decision on the penalty stored in the personal file is deleted, the related disciplinary file shall also be deleted.

The EIT grants the possibility to the affected staff member to submit a request for the deletion of his/her disciplinary file 10 years after the adoption of the final Decision. In this case, the Appointing Authority assesses whether to grant this request in light of the severity of the misconduct, the nature of the penalty imposed and the possible repetition of the misconduct during that period of 10 years.

