EUROPEAN COMMISSION
RESEARCH EXECUTIVE AGENCY

RECORD OF PERSONAL DATA PROCESSING ACTIVITY

In accordance with Article 31 of the Regulation (EU) 2018/1725 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 (Regulation), individuals whose personal data are processed by the Research Executive Agency (REA or Agency) in any context whatsoever are to be protected with regard to the processing of personal data and the Agency has to keep records of their processing activities.

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NAME OF THE PROCESSING ACTIVITY

Administrative Inquiries and Disciplinary Proceedings

1. MANDATORY RECORD UNDER ARTICLE 31 OF THE REGULATION

1.1. Name and contact details of controller

The controller is the Research Executive Agency (**"REA"** or **"the Agency"**). For organisational reasons, the role of the data controller is exercised by the Director of REA. The controller may be contacted at Marc.Tachelet@ec.europa.eu

1.2. Data Protection Officer (DPO)

REA Data Protection Officer: REA-DATA-PROTECTION-OFFICER@ec.europa.eu

1.3. Name and contact details of joint controller (where applicable)

Not applicable.

1.4. Name and contact details of processor (where applicable)

REA has assigned to the Investigation and Disciplinary Office of the European Commission ("**IDOC**") the role of "full case handling service" including the stages of administrative inquiries and disciplinary procedures. The powers of the Authority Enabled to Conclude Contract of Employment (AECC) remain with REA, with IDOC carrying out the 'operational' part of the procedure.

Email DG HR IDOC:
HR-MAIL-IDOC@ec.europa.eu

Email DG DIGIT for "ICT services" (ARES/HAN, functional mailboxes, etc.) (DIGITMOU@ec.europa.eu).

1.5. Purpose of the processing

The data processing aims at allowing the 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 or her obligations under the Staff Regulations, and, if necessary, to issue a disciplinary penalty. REA and IDOC control and process personal data to fulfil this mission.

If requested by IDOC, REA provides the data for the preliminary assessment stage (pre-inquiry): when the Agency is informed of a situation with a possible disciplinary dimension, it forwards the available information to IDOC for assessment (see SLA with HR.IDOC).

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

1.6. Legal basis for the processing

Personal data are processed pursuant to Regulation 2018/1725 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 ("**the Regulation"**).

The processing is necessary for the performance of tasks carried out in the public interest or in the exercise of official authority vested in the Union institution or body (Article 5(1)(a) of the Regulation) and for compliance with a legal obligation to which the controller is subject (Article 5(1)(b) of the Regulation), as established by the following legal acts:

- Articles 22, 26, 73 and 86 and Annex IX of the Staff Regulations (Council Regulation (EEC, Euratom, ECSC) No 259/68 of 29 February 1968 laying down the Staff Regulations of Officials of the European Communities (**the "SR"**) and articles 49, 50 and 119 of the Conditions of Employment of Other Servants of the European Communities (the **"CEOS"**);

- Commission Decision C(2019) 4231 of 12/06/2019 laying down general implementing provisions on the conduct of administrative inquiries and disciplinary procedures which has been adopted by analogy by the Agency in its decision REA/SC(2019)WP.3.3 of 11/09/2019;

The Agency may process special categories of personal data under Articles 10(2) of the Regulation in cases where:

- the processing is necessary for the purposes of carrying out the obligations and exercising specific rights of the controller or of the data subject in the field of employment and social security and social protection law insofar as it is authorised by Union law providing for appropriate safeguards for the fundamental rights and the interests of the data subject 10(2)(b);
- the processing relates to personal data which are manifestly made public by the data subject (Article 10(2)(e)).
- the processing is necessary for the establishment, exercise or defence of legal claims or whenever the Court of Justice is acting in its judicial capacity (Article 10(2)(f)).
- the processing is necessary for reasons of substantial public interest, on the basis of Union law which shall be proportionate to the aim pursued, respect the essence of the right to data protection and provide for suitable and specific measures to safeguard the fundamental rights and the interests of the data subject (Article 10(2)(g)).

1.7. Categories of data subjects

Statutory staff (Contract Agents, Temporary Agents, Seconded Officials), the person under investigation, witnesses, third parties (persons indicated in the file) and alleged victims (if any).

This includes staff members and former staff members: officials in active employment, on secondment, on leave on personal grounds, on non-active status, on leave for military service, on parental or family leave; officials on disability and retired officials; temporary staff and former temporary staff; contract staff and former contract staff; national experts; trainees and persons employed under private law contracts working on Agency premises.

1.8. Categories of personal data

1. Preliminary assessment (pre-inquiry):

- Identification and administrative data of the REA staff member(s) concerned.
- Data concerning allegations / declarations.

- Special categories of personal data:

  Depending on the reason or action forming the basis of the investigation and disciplinary action, REA may need to process special categories of personal data, such as: 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.

2. Administrative inquiry and disciplinary proceedings – IDOC has responsibility for processing operations within this area.

IDOC has published privacy notices further to Regulation 2018/1725. They set out the purposes for which personal data are processed, the way in which they are collected, treated, stored and protected, the manner in which the information is used and the rights that may be exercised in this regard.

During the closure of an inquiry, pre-disciplinary or disciplinary proceedings, personal data in IDOC's file can be communicated to other services on a need-to-know basis only. This is done, for example, because of their role in processing or following up on the disciplinary file. This mostly concerns OLAF, the Secretariat-General, the Legal Service, the Disciplinary Board, the AECC and the Security Directorate of the Directorate-General Human Resources and Security. The information may be communicated, upon request, to the EU Court or to another court with which the Commission is required to cooperate.

3. The AECC final decision (no supporting documentary evidence), with or without sanctions, will be stored in the personal file of the person concerned in REA.

The data processed are case-specific and the data processed adhere to the data minimisation principle in that they are adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed.

List of data categories:

- Identification and administrative data;
- Case-related data (allegations / declarations etc);
- Special categories of personal data (dependent upon the nature of the case);
- Data relating to personal details of the data subject: surname at birth, current surname, forename, street, postcode, place, country, date of birth, town/city of birth, country of birth, sex, nationality, other nationality, telephone numbers, e-mail address, ISDN number, social media relating to the investigation and disciplinary action;
- Data relating to 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;
- Data relating to individual responsibility of the person(s) concerned, including financial liability (Art. 22 of the SR which applies by analogy to the REA 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);

- Data relating to the legal representative or accompanying person of the data subject: name, surname, address;
- Data relating to witnesses: name, address, telephone numbers, email address;
- Data relating to any persons affected or harmed by the data subject (name, surname, medical data, details of behaviour or actions) leading to the disciplinary procedure;
- Data in the form of personal identification numbers (personnel number, department, unit, sector);
- Data relating to the physical characteristics of the data subject (i.e. image/video);
- Data concerning the private life of the data subject (external activities, friends, hobbies, sports, etc.);
- Data concerning salary, allowances and bank accounts of data subject;
- Data concerning recruitment and employment contracts of data subject (category of staff, grade, step, duration of the contract, documents relating to the work of the selection committee);
- Data concerning the data subject's family;
- Data concerning missions and journeys of the data subject;
- Data concerning social security and pensions of the data subject;
- Data concerning expenses and medical benefits of the data subject;
- Traffic data: Personal data relating to internet connections and/or the use of email or telephone may be processed (for example 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).
- When IDOC, or where applicable the AECC consider it appropriate, the hearing may also be audio recorded or held via videoconference (IDOC Guide and Commission Decision C(2019)4231 final.

- Electronic communications

  In case the AECC considers it 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 Article 25 of the Regulation.

4. Confidentiality of communications

The AECC is aware of the obligation to ensure confidentiality of electronic communications (telecommunications networks and terminal equipment) as provided for in Articles 36 and 37 of the Regulation.

If the AECC considers that it is necessary to gain access to electronic communications in the course of an administrative inquiry or disciplinary proceeding (and only on a case by case basis), the criteria defined in the respective EDPS guidelines and in the Regulation, namely, *inter alia* lawfulness, necessity, proportionality and choice of the less intrusive means of investigation will be observed.

It may be possible that the Agency (including IDOC for administrative inquiries under Annex IX of the Staff Regulations and disciplinary proceedings before the Agency's Disciplinary Board) needs to process data that cannot be identified at the stage of the prior check and that can vary according to the nature of the case

being dealt with. The Agency (including IDOC for administrative inquiries under Annex IX of the SR and disciplinary proceedings before the Agency Disciplinary Board) ensures that data processed are adequate, relevant and limited to what is necessary processed in conformity with Article 4(1)(c) of the Regulation.

Certain special categories of data as defined Article 10(1) of the Regulation might be processed by the Agency if any exception provided in Article 10(2) or Article 11 of the Regulation applies (including IDOC for administrative inquiries under Annex IX of the SR and disciplinary proceedings before the Agency Disciplinary Board). The data processed will ultimately depend on the nature and severity of the disciplinary investigation whilst applying the data minimisation principle.

1.9. Retention time (time limit for keeping the personal data)

The Agency applies the principles and retention periods indicated in the Common-Level Retention List for European Commission Files by analogy, as detailed here below (https://ec.europa.eu/info/sites/info/files/sec-2019-900_en.pdf) :

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 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 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.

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.

Is any further processing for historical, statistical or scientific purposes envisaged? **No**

1.10. Recipients of the data

Data may be disclosed to the following recipients on a need-to-know basis (the type of recipient may vary according to the type of administrative inquiries and during disciplinary proceedings):

Within the Agency:

- Director of the Agency in his/her capacity of Authority Empowered to Conclude Contracts (AECC);
- Heads of Department;
- Head of Unit "Administration";
- Head of Sector HR;
- REA HR Sector (HR staff in charge of the file);
- REA Internal services (Legal Service, Internal Control)
- Head of Unit "Finance";

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;
- 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;
- 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 Financial Regulation);
- REA Disciplinary Board; (depending on the constitution of the Board, this will comprise of current staff of REA 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).
- The European Data Protection Supervisor in accordance with Article 58 of the Regulation.

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.

1.11. Transfers of personal data to third countries or international organisations

Not applicable.

1.12. Description of security measures

All personal data in electronic format (e-mails, documents, databases, uploaded batches of data, etc.) that are processed during this processing activity are stored either on the servers of the European Commission or of the REA, the operations of which abide by the European Commission's security decisions and provisions established by the Security Directorate and DG DIGIT for such servers and services.
In order to protect personal data, REA has put in place a number of technical and organisational measures. 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. Organisational measures include restricting access to the personal data solely to authorised persons with a legitimate need to know for the purposes of this processing operation.

The data collected and the documents created by REA which contain the data are stored in the case file, which is encrypted. These files can only be accessed by authorised staff with the necessary access rights.
All hard copy data are kept securely in REA premises and can only be accessed by authorised staff with the necessary access rights.

REA staff apply strict measures to ensure that the personal data are not accessed by

unauthorised persons. This includes the use of locked cabinets, encrypted email and printing via presentation of personnel badges.

Relevant electronic communications are sent via SECEM encrypted email.

Access to data is granted only to authorised members of the REA staff which is authorised by the Head of Unit of REA Human Resources on a case-by-case basis.

1.13. Data Protection Notice

A Data Protection Notice (DPN) relevant to this data processing activity is available within the Register of records of personal data processing activities in REA on the REA website:
https://ec.europa.eu/info/sites/info/files/register_of_records_of_personal_data_processing_activities_in_rea.pdf