



## PRIVACY STATEMENT REGARDING PROCESSING PERSONAL DATA IN ADMINISTRATIVE INQUIRIES AND DISCIPLINARY PROCEEDINGS AT THE EIT

This privacy statement provides information on the processing of personal data by the European Institute of Innovation and Technology in the course of an administrative inquiries and/or disciplinary proceedings.

The processing of personal data follows the provisions of Regulation (EU) 2018/1725<sup>1</sup> 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 (hereinafter “Regulation”).

### 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 identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person.

**Processing** means any operation or set of operations which is performed on personal data or on sets of personal data, whether or not by automatic means, such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction.

### Who are the data subjects?

The data subjects are staff members being investigated (the persons concerned), witnesses, third parties (persons merely quoted in the file) and alleged victims.

### Who is the controller of the data processing?

The data controller is the EIT Director.

### What is the purpose of personal data processing?

The purposes of processing personal data are:

- to analyse and assess the collected information and accompanying evidence in order to establish the facts and circumstances of the case, with a view to determining whether there is a breach of the obligations under the Staff Regulations;
- to define your role in a case as a person concerned, a witness/third party or alleged victim;

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<sup>1</sup> OJ L 295, 21.11.2018, p. 39–98



- to evaluate the information received in order to determine the appropriate follow-up/decision: close a case without imposing any penalty/open an administrative inquiry/open a pre-disciplinary/disciplinary proceeding, impose penalties, address a warning to a person concerned, suspend a staff member, etc.

Please note that hindering an administrative inquiry or a disciplinary proceeding may have possible disciplinary consequences, for example, if a witness maliciously makes a false witness statement or wilfully withhold or destroy evidence it could serve as a ground for a separate inquiry and proceeding.

### **What types of personal data are processed?**

The following categories of personal data may be processed:

Personal data relating to all data subjects (i.e. person concerned by the case and other participating in the inquiry):

- staff member's basic personal information (name, surname, age, rank and personal staff number);
- staff member's contact details and other personal data concerning the recruitment or the evaluation of the staff member (name of line manager, hiring date, contractual category and grade, organisational entity to which one belongs);
- Events, facts and witness testimonies referring to the staff member involved in the case about the situation with a possible disciplinary dimension;
- Names of the investigators, inquiry team members and members of the Disciplinary Board.

Personal data relating to data subjects who are the subject of the particular case (which may be revealed during the inquiry directly from the concerned staff member(s) or indirectly from informants or witnesses or from documents containing personal data used as evidence):

- personal data related to absences, leave, missions, learning and development and generally to the working performance, economic and social behaviour where relevant to the performance of the staff member's tasks;
- personal data related to the private sphere and life of the staff member (social activities, behaviour), additional data related to the staff member's identity and personal status (gender, age), comments on the abilities and efficiency of the concerned staff member(s);
- only when necessary and related to the case: special categories of personal data (sensitive data) concerning the staff member: health data, religion (or opinions on religion), political opinions (or opinions on political status/opinions), philosophical beliefs (or opinions on philosophical beliefs), or trade union membership ((or opinions on trade union membership) sex life or sexual orientation (or opinion on sex life or sexual orientation), race or ethnic origin (or opinion on race or ethnic origin);
- personal data relating to criminal convictions and offences.

The EIT adheres to the principles of data minimisation, necessity, and proportionality regarding the personal data to be collected, the means and steps of the investigation. The collection of personal data will be limited to what is directly and strictly relevant and necessary to the purpose of the inquiry and of the disciplinary proceeding.

### **Who has access to the personal data of data subjects and to whom can they be disclosed?**

**Within the EIT:**

The data collected will only be disclosed to the absolute minimum of persons involved on a need-to-know basis. This could involve the Director of the EIT, the Anti-Fraud Coordinator, the Ethics Officer, Advisory Committee on Conflict of Interest, the Head of Administration, Human Resources staff, the investigator(s), the person(s) designated to hold the hearing, the members of the Disciplinary Board (including Secretariat), the Data Protection Officer, or any other person involved in the procedure. All internal recipients of the data shall be required to sign a specific confidentiality declaration.

The inquiry team (composed of one or more members) may request assistance from other specialist departments/units of the EIT, in particular the Administration Unit. For example, the IT officers may be involved and authorised to process such information on a strictly need-to-know basis and with strong limitations, is necessary and relevant for the inquiry or proceeding on question - the investigators' request should be specific so that the IT service will extract only specific and relevant information.

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 Administration Unit, Legal Officer).

Upon completion of the administrative inquiry 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.

In case of reporting directly to OLAF, your personal data will be processed according to OLAF Privacy Notice available at: [https://ec.europa.eu/anti-fraud/system/files/2021-07/privacy\\_notice\\_antifraud\\_information\\_request\\_en.pdf](https://ec.europa.eu/anti-fraud/system/files/2021-07/privacy_notice_antifraud_information_request_en.pdf).

**Within the Commission and other EU institutions/bodies/agencies:**

Access to your personal data may be given on a need-to-know basis and in compliance with the relevant current legislation for audit control or investigation purposes to the Court of Auditors, Internal Audit Service of the European Commission, and European Anti-Fraud Office (OLAF).

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

Access to the personal data may be granted also to the European Ombudsman and the European Data Protection Supervisor upon request, the General Court, and the European Court of Justice to the extent necessary for handling the review procedure and litigation.

**Technical and organizational measures:**

- access to personal data is restricted to recipients specified above;
- according to the rules of data storage the related files shall be saved on the EIT devices of the authorized staff personnel during the ongoing administrative inquiry/disciplinary proceeding without using the cloud services and web tools such as ARES, SharePoint as well as personal devices, and shall



be stored in the Director's safe during the established retention period after the closure of the procedure.

### How long do we keep your data?

**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.

**Administrative inquiry file:** When the EIT launches an inquiry including the collection of evidence and interviews of individuals, and/or pre-disciplinary hearing, there are three possibilities:

- i) the inquiry is closed without follow-up or
- ii) a warning is addressed to the staff member or
- iii) the Appointing Authority decides to initiate the disciplinary proceeding.

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.

In case ii) after 18 months of the date of the warning, a person concerned may ask the appointing authority to have it removed from his or her personal file.

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 **15 years** after the adoption of the final Decision.

The person concerned has a right to submit a request to the EIT Director for the deletion of a written warning or reprimand 3 years after the Decision was adopted or in case of another penalty (except for removal from the post) 6 years after the Decision. After the Appointing Authority granted 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, there is no reason to keep the related disciplinary file.

### What are the rights of the data subject?

In accordance with Articles 15, 16, 17, 18, 19 of the Data Protection Regulation of European Institutions the data subjects have:

the **right for information**, the **right of access**, the **right of rectification** in case their personal data is not complete or not accurate and the **right to erasure** ("right to be forgotten")

The right to rectification may be exercised, for instance, by adding your comments to the inquiry and/or disciplinary files, by including additional testimonies, or other relevant documents.



The rights can be exercised by sending a written request to [EIT-DPO@eit.europa.eu](mailto:EIT-DPO@eit.europa.eu). As a general rule, the requests are handled without undue delay and in any event within one month of receipt of the request; this period may be extended by further two months where necessary, taking into account the complexity and number of requests.

#### Possible restrictions:

One or several of these rights might be restricted by the EIT for a temporary period of time in accordance with Article 25 of the Regulation and the EIT internal rules on restrictions<sup>2</sup>. Any such restriction will be limited in time, proportionate, and respect the essence of the above-mentioned rights. A decision regarding restriction implication will be taken strictly on a case-by-case basis and the reasons for taking such a decision will be documented (i.e. motivated decision). These reasons must prove that the restriction is necessary to protect one or more of the interests and rights listed in the Regulation, and they must be documented before the decision to apply any restriction or deferral is taken.

When considering access rights and the right to be informed the EIT considers the status of the requester and the current stage of the investigation. For example, informing the person under investigation about the inquiry or the disciplinary proceeding at an early stage may be detrimental to the investigation. In these cases, the EIT might need to restrict the right to the information to the person under investigation to ensure that the inquiry or disciplinary proceeding is not jeopardised. The right of access of a person under investigation to the identity of a witness may be restricted in order to protect the witness' rights and freedoms.

Persons being investigated and alleged victims should have full access to the final decision of an inquiry or a disciplinary proceeding. However, the right of access of a witness to the final decision should be strictly assessed on a need-to-know basis; it is possible that the final decision in the end does not include personal data of a witness; it would thus be out of scope for a request for access from that person.

As a rule, the person concerned will be informed of the principal reasons for a restriction unless this information would cancel the effect of the restriction as such. You have the right to make a complaint to the EDPS concerning the scope of the restriction.

Rights of persons involved during stages of the procedure:

#### Administrative inquiry:

The appointing authority shall inform the person concerned as soon as an administrative inquiry has been opened in his or her regard provided that that information does not hinder the inquiry (see the section above Possible restrictions). While an inquiry is ongoing, the person concerned shall not have access to the file.

Staff members and any other person who may have information relevant to the administrative inquiry may be asked to provide the written statements or called to a hearing (conducted by videoconference, phone, or any equivalent media). They have to be informed of their rights and obligations regarding the ongoing procedure as well as the subject of the inquiry before the hearing or submitting written statements.

Staff members or any other person called to a hearing may be accompanied or assisted by a person of their choice.

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<sup>2</sup> Ares(2023)4368918)



The hearing shall be recorded in a document signed by the staff member, or any other person who was heard, and by the interviewers once it has ended. Documents submitted by the staff member during the hearing shall be attached to it. The hearing may be audio recorded.

Once the administrative inquiry has been completed and before written conclusions referring by name to a person concerned are drawn up, the person concerned shall be given the opportunity to comment on the facts concerning him or her. Where absolute secrecy is required in relation to investigative procedures by a national judicial authority, the obligation to invite the person concerned to comment may be deferred by the appointing authority.

Where the appointing authority decides to close the case without further action, it shall inform the person concerned of its decision in writing. At the request of the person concerned, this decision may be inserted in his or her personal file.

At the request of the person concerned, and subject to the protection of the legitimate interests of third parties, the appointing authority shall forward to him or her all the documents directly linked to the allegations concerning him or her.

#### **Pre-Disciplinary Proceedings:**

The person concerned shall be invited to a hearing no less than 10 working days before the hearing as well as be provided with all documents relating to the potential breach of the statutory obligations, including the administrative inquiry report or the OLAF investigation report, except when this affects legitimate interests of confidentiality. In such cases, some of those documents or parts thereof may be withheld for a period of time proportionate to the protection of such interests and the person concerned shall be informed accordingly.

The hearing shall take place, in principle, in the physical presence of the person concerned. In agreement with the person concerned, it may be conducted by videoconference and/or telephone or other equivalent media. The person concerned may be accompanied or assisted by a person of his or her choice.

The person concerned shall be informed before the hearing of his or her rights and obligations in respect of the ongoing proceedings and of their potential follow-up.

If, for objective reasons, the person concerned cannot be heard in person, he or she shall be given the opportunity to be represented by a person of his or her choice or may be asked to comment on the documents of the case and to reply to the appointing authority's or the mandated person's questions in writing, by a fixed deadline.

A hearing report shall be drawn up. It shall be signed by the person concerned and/or by the person accompanying, assisting, or representing him or her. The person concerned shall receive a copy of the hearing report as well as a copy of any document presented to him or her during such hearing. The hearing may also be audio recorded.

Where the appointing authority decides that no case can be made against the person concerned pursuant to Article 3(1)(a) of Annex IX to the Staff Regulations, he or she may request that a copy of the decision be inserted in his or her personal file.

Where the appointing authority decides to address a warning to the person concerned pursuant to Article 3(1)(b) of Annex IX to the Staff Regulations, it shall be inserted in his or her personal file. The person concerned has the right to add comments on the warning that shall also be inserted in the personal file.

**Disciplinary proceedings:** Disciplinary proceedings are initiated by the Appointing Authority who informs the persons concerned in a note notifying her/him of the established facts and the circumstances in which they



arose, the alleged breaches of his or her obligations. Disciplinary proceedings may be held involving or not involving the Disciplinary Board.

During disciplinary proceedings, a person concerned has the equivalent rights regarding participation in the hearing, being represented, and providing comments as on the stage of pre-disciplinary proceedings.

### **Who should be contacted in case of queries or complaints?**

You have the right of recourse at any time to the EIT's Data Protection Officer ([EIT-DPO@eit.europa.eu](mailto:EIT-DPO@eit.europa.eu)). You may lodge a complaint with the European Data Protection Supervisor ([EDPS@edps.europa.eu](mailto:EDPS@edps.europa.eu)).

### **Legal basis of the processing operation**

#### **General legal basis:**

- Regulation (EU) 2021/819 of the European Parliament and of the Council of 20 May 2021 on the European Institute of Innovation and Technology;
- Article 86 of the Staff Regulations and its Annex IX;
- Articles 49, 50, 50a and 119 of the Conditions of Employment of Other Servants;

#### **Specific EIT legal basis:**

- Decision 29/2022 of the Governing Board of the European Institute of Innovation and Technology (EIT) of 5 August 2022 laying down general implementing provisions on the conduct of administrative inquiries and disciplinary proceedings
- Decision 22/2023 of the Governing Board of the European Institute of Innovation and Technology (EIT) of 21 June 2023 on Internal rules concerning restrictions of certain rights of data subjects in relation to processing of personal data in the framework of the functioning of the EIT

### **Grounds for lawfulness**

In line with Article 5(a) of Regulation No. (EU) 2018/1725, 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 EIT.

Furthermore, the processing is also lawful based on Article 5(b) of Regulation No. (EU) 2018/1725, as processing is necessary for compliance with a legal obligation to which the controller is subject.