THE EUROPEAN JOINT UNDERTAKING FOR ITER AND THE DEVELOPMENT OF FUSION ENERGY

# SPECIFIC PRIVACY NOTICE ON PERSONAL DATA PROTECTION REGARDING ADMINISTRATIVE INQUIRIES AND/OR DISCIPLINARY PROCEEDINGS

In the following data subjects are informed about the processing and data protection safeguards put in place by F4E to make sure any processing of their personal data is in line with Regulation (EC) No 45/2001 *on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data.*

## Identity of the Controller

Mr Hans Jahreiss
Head of Administration Department
*Fusion for Energy*
*C/ Josep Pla, nº 2,*
*Torres Diagonal Litoral, B3*
*08019 Barcelona, Spain*

## 1. Purpose of the processing operation

The purpose of this procedure is to Process the data handled in the framework of Administrative Inquiries (AI) and/or Disciplinary Procedures (DP).

## 2. Legal Basis

Council Decision of 27 March 2007 "establishing the European Joint Undertaking for ITER and the Development of Fusion Energy and conferring advantages upon it" - 2007/198/Euratom, as last amended by Council Decision of 10th February 2015 (2015/224 Euratom), O.J. L 37, 13.2.2015, p.8, in particular Article 6 thereof;

Statutes annexed to the Council Decision (Euratom) No 198/2007 "establishing the European Joint Undertaking for ITER and the Development of Fusion Energy and conferring advantages upon it", as last amended on 10th February 2015, in particular Article 10 thereof;

Staff Regulations of Officials (SR) and the Conditions of Employment of Other Servants of the European Communities (CEOS), in particular Article 86 of the Staff Regulations, Annex IX to the Staff Regulations as well as Articles 49, 50, 50a and 119 of the CEOS.

## 3. Lawfulness of the processing

Processing is necessary for the performance of F4E tasks on the basis of the F4E founding instrument or other legal instrument adopted on the basis thereof or in the legitimate exercise of official authority vested in F4E or in a third party to whom the data are disclosed (Regulation (EC) 45/2001, Article 5(a).

The processing is also necessary in order to comply with Fusion for Energy legal obligations under the Staff Regulations and the Conditions of Employment of Other Servants.

## 4. Data Subject(s) concerned

Fusion for Energy staff members (as well as former staff members), as well as any third-party involved either in the inquiry or in the disciplinary proceedings (as victim, witness, whistle-blower, etc.).

## 5. Categories of data

The precise content of the file will vary according to the purpose of the particular case, but as a general principle, the following data may be processed, always subject to the protection of the legitimate interests of third parties:

**Administrative Inquiries**

- Documents, testimonies, allegations and data linked to the inquiry
- Name, first name of the person requesting an inquiry
- Name, first name of the person under investigation
- Name, first name of any third party involved
- Name, first name of witnesses
- Name, first name of the members of the investigation team
- Decision of the Appointing Authority

**Disciplinary procedures**

- Record of the hearings foreseen under Article 3 of Annex IX to the Staff Regulations as well as remarks/comments made on it by the staff member about whom allegations were made

- Records of interviews with certain persons following the hearing foreseen under Article 3 of Annex IX to the Staff Regulations (including name, first name)
- Report from the Appointing Authority to the Disciplinary Board, stating the facts complained of and, where appropriate, the circumstances in which they arose, including any aggravating or extenuating circumstances (also communicate to the staff member concerned)
- Opinion of the Disciplinary Board (communicated to the Appointed Authority and to the staff member concerned)
- Decision of the Appointing Authority

**6. Recipients of the data processed**

The following people have access:

- Human Resources officer (for the administrative handling of the procedure)
- Head of Human Resources unit (for the administrative handling of the procedure)
- Head of Administration (for the administrative handling of the procedure)
- Appointing Authority/Authority Responsible for Concluding Contracts of Employment (Director)
- Assistant to the Director
- Investigation team
- Any staff member or specialist assisting the investigation team if the latter considered it necessary
- Members appointed to the Disciplinary Board
- Staff member investigated or about whom there is a disciplinary procedure

In case of hearing in front of the Disciplinary Board: the person assisting the staff member concerned (if the latter decided to be assisted and decides to give access to the information)

In case of hearing in front of the Disciplinary Board: staff member representing Fusion for Energy and appointed by the Appointing Authority

- Fusion for Energy Head of the Legal Service Unit and responsible officer
- Internal auditor and Court of Auditors (for audit purpose only)
- F4E Ethics Officer, if relevant
- European Ombudsman (upon justified request)
- Court of Justice (if relevant)
- OLAF (to check whether the office is not undertaking any investigation on the case or in case OLAF already made an investigation on the staff member)
- Specialised Financial Irregularities Panel (may be consulted by the investigators in case of financial irregularity)
- National judicial authorities (taking into consideration the point below on transfer of data)

Internal Fusion for Energy recipients and external recipients (such as members of Disciplinary Board or investigation team) of administrative and disciplinary related data will be asked to sign a declaration of confidentiality, stating that they shall process the personal data only for the purpose for which they were transmitted.

Also, if appropriate, for monitoring or inspection tasks, access may be given to:

- Director of F4E
- Head of Admin
- Head of the Legal Service Unit, and/or responsible Legal Officer
- F4E OLAF and Ethics Officer
- Internal Auditor (IAC/IAS) and the European Court of Auditors (for audit purposes)
- The European Anti-Fraud Office (OLAF)
- EU Court of Justice
- European Ombudsman

**7. Retention period of data**

Different rules exist depending on whether reference is made to the files themselves or to the penalties imposed in the case of the opening of disciplinary proceedings.

Regarding the files, three different scenarios are possible:

**Pre-inquiry file**

If the preliminary assessment of the information collected is made and the decision is not to open and administrative inquiry, the file will be kept for 2 years after the adoption of the decision that no enquiry will be launched. This might be necessary for audit purposes, access requests from affected individual, complaints to the Ombudsman, General Court;

**Inquiry file**

When F4E launches an inquiry including the collection of evidence and interview of individuals, there could be three outcomes: i) the inquiry is closed without follow-up, ii) a warning is issued iii) the Appointing Authority decides to initiate disciplinary proceedings. For cases i) and ii), the file will be kept for 5 years from closure of the investigation, taking into account audit purposes and recourses from the affected individuals. For case iii), F4E transfers the inquiry file to the disciplinary file, as the disciplinary proceedings are launched on the basis of the evidence collected during the administrative inquiry.

**Disciplinary file:**

Without prejudice to Article 27 of Annex IX to the Staff Regulations and due to the provisions of Article 10 (h) and (i) of the same Annex the Appointing Authority must be able to assess the conduct of the staff member throughout the course of his/her career and as long as the staff member remains bound by the Staff Regulations/Conditions of Employment of Other Servants obligations. The disciplinary file will therefore be kept during that period.

The affected individual may submit a request for the deletion of their disciplinary file 10 years after the adoption of the final Decision. The Appointing Authority should assess whether to grant this request in light of the severity of the misconduct and the penalty imposed and the possible repetition of the misconduct after that period of 10 years. A reasoned decision shall be provided and also filed.

Regarding the penalties:

Written warning or reprimand: at least three years in the personal file. According to Article 27 of Annex IX to the Staff Regulations, the person against whom a disciplinary penalty other than removal from post has been ordered may, after three years, submit a request for deletion from his file of all reference to that measure. If such a request is made and accepted, the reference to the disciplinary measure will therefore be deleted from the personal file after three years. If there is no request or if the Appointing Authority refuses it (in that case, a reasoned decision shall be provided and also filed), the decision may be kept longer, potentially throughout the course of the staff member career and as long as s/he remains bound by the Staff Regulations/Conditions of Employment of Other Servants obligations.

Any other penalty (except removal from post): at least six years. According to Article 27 of Annex IX to the Staff Regulations, the person against whom a disciplinary penalty other than removal from post has been ordered may, after three years, submit a request for deletion from his file of all reference to that measure. If such a request is made and accepted, the reference to the disciplinary measure will therefore be deleted from the personal file after six years. If there is no request or if the Appointing Authority refuses it (in that case, a reasoned decision shall be provided and also filed), the decision may be kept longer, potentially throughout the course of the staff member career and as long as s/he remains bound by the Staff Regulations/Conditions of Employment of Other Servants obligations.

Removal from post: it is kept for the duration of the personal file

## 8. Transfer of data

In case data are transmitted to the competent national authorities:

- If data are transferred at the request of the national authority, the latter should establish the 'necessity' for the transfer, i.e. it should 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.
- If data are transferred on the sole initiative of Fusion for Energy, it is the latter which should establish the 'necessity' for the transfer in a reasoned decision.

In cases where countries have not implemented a comprehensive data protection framework for judicial activities, the Council of Europe Convention 108 is applicable to judicial authorities.

## 9. Rights of the data subject

*(Rights of access, to rectify, to block, to erase, to object, according to Article 13-20 of Regulation 45/2001)*

Right of access:

Information to be provided to the affected individuals:

As stated in Article 2 of the Annex IX, but not exclusively, the Appointing Authority shall inform the person concerned about the opening, the different steps and scenarios and the closing of a specific administrative enquiry or a disciplinary proceeding subject to the protection of the legitimate interests of third parties.

It might be possible to restrict the right of information, access or rectification of an individual as for instance informing the person under investigation about the enquiry or the disciplinary proceedings at an early stage may be detrimental to the investigation and the procedure might be jeopardised. The restriction will be applied strictly on a case by case basis.

When the rights as described below are limited or deferred, the decision will be substantiated.

Right of access: according to Article 13 of Regulation 45/2001, the data subjects have the right of access to the personal data that are processed by the institution, specifically (regarding):

- Confirmation if data related to him or her are being processed;
- information on the purposes of the processing operation;
- categories of data concerned;
- recipients or categories of recipients to whom the data are disclosed;
- communication in an intelligible form of the data undergoing processing and their

source;
- logics involved in any automated decision process concerning him/her.

Data subjects should be granted full access to the documents in their disciplinary file, as well as to the copies of the final decisions on an AI&DP stored in their personal file. This is subject to the protection of the legitimate interests of third parties (i.e. the identity of a witness may be protected in order to protect the witness rights and freedoms)

Data subjects shall always have their right of access granted to control if the data reflect the facts and perceptions that they wanted to transmit and if their statements are as complete and accurate as possible.

Right of rectification:

The data subjects have the right to obtain from the data Controller the rectification of any inaccurate or incomplete personal data, without delay. In the context of an AI&DP in particular, data subjects should be allowed to add their comments and to include recourse or appeal decision in their files.

Right of blocking:

The data subjects have also the right to obtain the blocking of their personal data when:
- they contest the accuracy of the data;
- the controller no longer needs them but they need to be maintained for purposes of proof;
- the processing is unlawful and the data subject requests blocking instead of erasure.

In case the data subject contests the accuracy of his/her data, the relevant data are blocked for a period necessary for verifying the accuracy and completeness of the data.

Personal data blocked shall only be processed for the purpose of proof (with the consent of the data subject) or for the protection of the rights of a third party.

Right of erasure

The data subjects can request the cancellation of their personal data if they consider that they are subject to an unlawful processing.

Right to object:

The data subjects can object the processing of their personal data, unless the processing is needed for the purposes of Article 5b) and d) of Regulation 45/2001:
- on legitimate grounds relating to his/her particular situation;
- before their personal data are disclosed to third parties.

Limitations:

The Data Controller may restrict, according to Article 20(1) of Regulation 45/2001, access to the information/documents to safeguard:

a) the prevention, investigation, detection and prosecution of criminal offences;
b) any important financial or economic interest of the Member States;
c) the protection of the data subject or the rights of freedoms of others;
d) the national security, public security or defence of the Member States;
e) the monitoring, inspection or regulatory task connected with the exercise of official authority in ceases referred to in a) and b).

In that case, the data subject will be informed of the principal reasons for applying such restrictions.

Any restriction to the right of access of data subjects should be strictly necessary and should be balanced with the right of defence. In particular:

- in case of whistleblowers, informants or witnesses, any restriction to the right of access of these persons should be in line with Article 20 of the Regulation;
- the identity of whistleblowers should be kept confidential in as much as this would not contravene national rules regarding judicial proceedings.

Common steps for the exercise of the above mentioned rights:

Any request from a data subject concerning the rights above described should be addressed to the Controller through the following contact e-mail address: Resources-Controller@f4e.europa.eu.

The Controller shall provide information on action taken on a request (mentioned above) to the data subject without undue delay and in any event within one month of receipt of the request. That period may be extended by two further months where necessary. In such a case, the Controller shall inform the data subject of any such extension within one month of receipt of the request, together with the reasons of the delay.

Where the data subject makes the request by electronic means, the information shall be provided by electronic means where possible, unless otherwise requested by the data subject.

Every data subject has the right at any time to lodge a complaint with the European Data Protection Supervisor: EDPS@edps.europa.eu, if the data subject considers that the processing of his/her personal data infringes the applicable Data Protection Regulation.

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