



## **DATA PROTECTION NOTICE**

### **Preliminary assessments, administrative inquiries and (pre-)disciplinary proceedings**

#### **1. Introduction**

The European Union Agency for Asylum (hereinafter 'the EUAA' or 'the Agency') is committed to protecting your privacy. The EUAA collects and further processes personal data pursuant to [Regulation \(EU\) 2018/1725](#)<sup>1</sup> (hereinafter 'the EUDPR').

This Data Protection Notice explains *inter alia* the reasons for the processing of your personal data, the way we collect, handle and ensure protection of all personal data provided, how that information is used and what rights you have in relation to your personal data. It also specifies the contact details of the responsible Data Controller with whom you may exercise your rights, as well as of the Data Protection Officer (DPO) and the European Data Protection Supervisor (EDPS).

#### **2. Why and how do we process your personal data?**

Your personal data is processed in order to conduct preliminary assessments (pre-inquiries) of requests for assistance filed under Article 24 of the Staff Regulations, including with regard to cases of (sexual or psychological) harassment, as well as, where appropriate, for further follow-up of the relevant cases by means of administrative inquiries (investigations) and (pre-)disciplinary proceedings, including proceedings on the suspension of the staff members concerned from their duties (hereinafter 'suspension proceedings').

Your personal data may be processed at the preliminary assessment stage, i.e. prior to the formal opening of a case concerning a possible breach of statutory obligations. At the end of the preliminary assessment, the Authority Empowered to Conclude Contracts of Employment (hereinafter 'the AECE')<sup>2</sup>, will decide whether to close the case without further action (non-case) or whether to follow-up on such case by means of an administrative inquiry, or directly by opening pre-disciplinary proceedings. An administrative inquiry is carried out by investigator(s) mandated by the AECE and directed at establishing the facts and determining the individual responsibility of the person(s) concerned in respect of the facts and circumstances of the case. Upon conclusion of the administrative inquiry, the investigator(s) present a report on the case to the AECE, proposing either that the case be closed without further action or that disciplinary proceedings be opened against the person(s) concerned.

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<sup>1</sup>. Regulation (EU) 2018/1725 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, OJ L 295, 21.11.2018, p. 39-98.

<sup>2</sup>. The AECE is the Executive Director of the EUAA but, in certain cases, AECE powers are also exercised by the Management Board of the EUAA as per the latter's Decision No 98 of 19 January 2022 on the delegation to the Executive Director of the powers conferred by the Staff Regulations of Officials of the EU on the appointing authority and by the Conditions of Employment of Other Servants of the EU on the authority authorised to conclude contracts of employment.





Disciplinary proceedings may be opened against the person(s) concerned either before the Disciplinary Board or without the latter's involvement.

### 3. On what legal ground(s) do we process your personal data?

In accordance with Article 60(1) and (3) of [Regulation \(EU\) 2021/2303](#)<sup>3</sup> (hereinafter 'the EUAA Regulation'), "[t]he Staff Regulations, the Conditions of Employment and the rules adopted by agreement between the institutions of the Union for giving effect to the Staff Regulations and the Conditions of Employment shall apply to the Agency's staff", whereas "[t]he Agency shall exercise the appointing authority powers in respect of its own staff".

Reference is also made in particular to Articles 12a, 24, 86, 90 and Annex IX to the Staff Regulations of Officials of the European Union<sup>4</sup>, as well as the first paragraph of Article 11, Articles 46, 50a, 81, 117 and 119 of the Conditions of Employment of Other Servants of the European Union (CEOS).

As far as the implementing rules to the Staff Regulations and the CEOS are concerned, reference must be made to the Decision No 69 of the Agency's Management Board dated 25 September 2020 on the application of the European Commission general implementing provisions on the conduct of administrative inquiries and disciplinary proceedings<sup>5</sup> and, in particular with regard to cases of (sexual or psychological) harassment, to the Decision No 50 of the Agency's Management Board dated 16 July 2019 on its policy on protecting the dignity of the person and preventing psychological harassment and sexual harassment<sup>6</sup>.

Consequently, the relevant processing operation is lawful under Article 5(1) points (a) and (b) of the EUDPR given that it is necessary both for the functioning of the EUAA as well as for compliance with a legal obligation to which the Agency is subject by virtue of the Staff Regulations and the CEOS and the relevant implementing rules, as mentioned above.

### 4. Which personal data do we collect and further process?

The following (categories of) personal data related to members of the EUAA statutory staff (Temporary Agents and Contract Agents) concerned by preliminary assessments, administrative inquiries and/or (pre-)disciplinary proceedings, including suspension proceedings, may be processed:

- Identification and administrative data of the staff members concerned (i.e. 'objective' or 'hard' data);

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<sup>3</sup>. Regulation (EU) 2021/2303 of the European Parliament and of the Council of 15 December 2021 on the European Union Agency for Asylum and repealing Regulation (EU) No 439/2010, OJ L 468, 30.12.2021, p. 1-54.

<sup>4</sup>. Staff Regulations of Officials of the European Union ('Staff Regulations') and Conditions of Employment of Other Servants of the European Union ('CEOS'), laid down by Council Regulation (EEC, Euratom, ECSC) No 259/68, OJ L 56, 4.3.1968, p. 1, as last amended by Regulation (EU, Euratom) No 1023/2013 of the European Parliament and of the Council of 22 October 2013, OJ L 287, 29.10.2013 p. 15.

<sup>5</sup>. Ref. number EASO/MB/2020/170.

<sup>6</sup>. Ref. number: EASO/MB/2019/169.



- Personal data included in allegations or statements made in requests, written or oral (witness) testimonies or other declarations of the staff members concerned by or otherwise involved in the preliminary assessments, administrative enquiries and/or (pre-)disciplinary proceedings (i.e. 'subjective' data or 'hard' data);
- Sensitive data (e.g. data concerning health, political opinions and trade union membership).

Any personal data which may be revealed during the preliminary assessments, administrative inquiries and/or (pre-)disciplinary proceedings either directly by the staff member(s) concerned or indirectly by informants or witnesses or by documents used as evidence may also be processed.

Moreover, objective and subjective data related to the investigator(s), the members of the Disciplinary Board and any other person involved in the preliminary assessments, administrative inquiries and/or (pre-)disciplinary proceedings may be processed.

## **5. How long do we keep your personal data?**

We keep your personal data for no longer than necessary and appropriate having regard to the purposes for which such data is processed.

Upon conclusion of the preliminary assessment and if the case is closed (non-case), your personal data is kept for a maximum period of 2 years from the closure of the case. If an administrative inquiry is launched, a maximum retention period of 5 years from the closure of the inquiry applies.

If the administrative inquiry is closed without further action, your personal data is kept for a maximum period of 5 years from the closure of the inquiry. If, following the administrative inquiry, a disciplinary procedure is initiated, the disciplinary file is stored for a maximum period that is defined as follows:

If the case is closed without any penalty being imposed, the final decision is retained in the personal file of the staff member concerned for 10 years after the last pension payment. In accordance with Article 27 of Annex IX to the Staff Regulations, a staff member against whom a disciplinary penalty other than removal from post has been imposed may, after 3 years in the case of a written warning or reprimand, or after 6 years in the case of any other disciplinary penalty, submit a request for the deletion from his/her personal file of any reference to such measure. The AECE shall decide whether to grant this request or not. If the request is granted, the disciplinary file which led to the penalty shall be deleted. If there is no request from the staff member concerned, or if the AECE rejects any such request, the final decision is retained in the personal file for 10 years after the last pension payment.

## **6. Who has access to your personal data and to whom is it disclosed?**

The following (categories of) recipients may have access to the personal data identified above:

- The Executive Director (AECE) and his/her Secretariat;
- Personnel of the Human Resources Unit (HRU) and of the Legal Services Unit (LSU) on a need-to-know basis;



- Staff members concerned by or otherwise involved in the preliminary assessments, administrative inquiries and/or (pre-)disciplinary proceedings;
- Investigator(s);
- Members of the Disciplinary Board;
- The Management Board and its Secretariat;
- The General Court and/or Court of Justice of the EU in case of appeal;
- The European Ombudsman in case of maladministration;
- Investigative/audit bodies, such as the European Anti-Fraud Office (OLAF) and the Internal Audit Service (IAS);
- External provider(s) of legal services.

## **7. How do we protect and safeguard your personal data?**

Any hard copies of documents relevant to the preliminary assessments, administrative inquiries and/or (pre-)disciplinary proceedings, including suspension proceedings, are stored in secured cupboards and only accessible to authorised staff. Electronic files are stored in the Agency's secure IT systems, including ERDMS, with access restricted to authorised staff.

The EUAA has put in place a number of technical and organisational measures as required under Article 33 of the EUDPR. Technical measures include appropriate actions to address online security, risk of data loss, 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.

All persons authorised to access the data are bound by the obligation of confidentiality. Investigators and other persons authorised to access to information pertaining to administrative inquiries and/or (pre-)disciplinary proceedings are required to sign confidentiality declarations. The external providers of legal services with whom the Agency collaborates are bound by strict confidentiality and data protection requirements, as reflected in the Framework Contracts signed with them.

## **8. Do we transfer any of your personal data to third countries or international organisations (outside the EU/EEA)?**

This processing activity does not entail any transfers of personal data to third countries or international organisations (outside the EU/EEA).

## **9. Does this processing involve automated decision-making, including profiling?**

This processing activity does not involve automated decision-making, including profiling.



## 10. What are your rights and how can you exercise them?

According to the EUDPR, you are entitled to access your personal data and to rectify it in case the data is inaccurate or incomplete. If your personal data is no longer needed by the EUAA or if the processing operation is unlawful, you have the right to erase your data. Under certain circumstances, such as if you contest the accuracy of the processed data or if you are not sure if your data is lawfully processed, you may ask the Data Controller to restrict the data processing. You may also object, on compelling legitimate grounds, to the processing of data relating to you. Additionally, you have the right to data portability which allows you to obtain the data that the Data Controller holds on you and to transfer it from one Data Controller to another. Where relevant and technically feasible, the EUAA will do this work for you.

In the context of the performance of administrative inquiries and disciplinary proceedings and formal procedures for cases of (sexual or psychological) harassment, the Data Controller may restrict the application of certain rights of the data subjects, i.e. their right of information and access, their rights to rectification, erasure and restriction of processing, as well as their rights to communication of a personal data breach and confidentiality of electronic communications, under the conditions stipulated in the Agency's Management Board Decision No 64 of 6 July 2020 on internal rules concerning restrictions of certain rights of data subjects in relation to the processing of personal data in the framework of the functioning of the Agency<sup>7</sup>.

In particular, any restrictions to the above-mentioned rights may be imposed, in duly justified cases, on the basis of the grounds stipulated in points (b), (c), (f), (g), (h) and (i) of Article 25(1) of the EUDPR, following an assessment of their necessity and proportionality taking into account, *inter alia*, the risks to the rights and freedoms of data subjects. Any restrictions imposed shall be subject to period review every 6 months from their adoption and at the closure of the relevant inquiry or other procedure. They shall be lifted as soon as the circumstances that justify them no longer apply, in particular when it is considered that the exercise of the restricted right would no longer cancel the effect of the restriction imposed or adversely affect the rights or freedoms of other data subjects.

Should you require further information regarding the processing of your personal data, or should you wish to exercise any of the above-mentioned rights, you may contact the Data Controller, i.e. the Executive Director of the EUAA, by sending an e-mail to [edsecretariat@euaa.europa.eu](mailto:edsecretariat@euaa.europa.eu).

You may always submit queries, remarks or complaints relating to the processing of your personal data to the Data Protection Officer (DPO) of the EUAA by using the following e-mail address: [dpo@euaa.europa.eu](mailto:dpo@euaa.europa.eu).

In case of conflict, complaints can be addressed to the European Data Protection Supervisor (EDPS) using the following e-mail address: [edps@edps.europa.eu](mailto:edps@edps.europa.eu).

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<sup>7</sup>. Ref. number: EASO/MB/2020/115.